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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~205~~. 46

WILLIAM E. CHRISTIAN ET AL., APPELLANTS,

vs.

THE ATLANTIC AND NORTH CAROLINA RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

FILED AUGUST 2, 1886.

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OCTOBER TERM, 1888.

No. 307.

WILLIAM E. CHRISTIAN ET AL., APPELLANTS,

vs.

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1 UNITED STATES OF AMERICA,
Eastern District of North Carolina:

Circuit Court, Fourth Circuit.

Be it remembered that on the 21st day of July, A. D. 1883, William E. Christian, a citizen and resident of the city of Richmond and State of Virginia, by his solicitor, Joseph B. Batchelor, filed his bill in the office of the circuit court of the United States for the eastern district of North Carolina, at Raleigh, in said district, against The Atlantic and North Carolina Railroad Company, F. M. Simmons, proxy, representing the stock owned by the State of North Carolina in said company; John D. Whitford, C. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wootten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wootten, president and directors of said company, and John M. Worth, treasurer of said State, and gave bond for the prosecution of his said suit; which said prosecution bond is in the words following to wit:

2 *Prosecution Bond.*

United States Circuit Court, Fourth Circuit, Eastern District of North Carolina.

WILLIAM E. CHRISTIAN, Plaintiff,
against
THE ATLANTIC AND NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing Stock Owned by the State, and John D. Whitford, President; Chas. C. Clark, Henry F. Grainger, Council S. Wooten, Paul F. Faison, J. F. Parrott, Wm. T. Caho, James C. Davis, Eugene Morehead, James A. Bryan, John Gatling, and John C. Wooten, Directors of said Company, and John M. Worth, Treasurer of the State of North Carolina.

We, William E. Christian and Fred. R. Scott, acknowledge ourselves bound to the defendants in the above-named suit in the sum of three hundred dollars, to be levied of our goods and chattels, lands and tenements; the above obligation to be void upon the condition that the said obligors pay to the said defendants all such costs and damages as may be adjudged to be paid them by reason of failure to prosecute the above-entitled suit successfully.

WILLIAM E. CHRISTIAN,
By JOS. B. BATCHELOR,
His Attorney.
FRED R. SCOTT,
By JOS. B. BATCHELOR,
His Attorney.

Filed July 21, 1883.

N. J. RIDDICK, *Clerk*,
By VITRUVIUS ROYSTER,
Deputy Clerk.

Which said bill of complaint is in the words and figures following, to wit:

3 *Bill of Complaint.*

Circuit Court of the United States in and for the Eastern District of North Carolina.

WILLIAM E. CHRISTIAN *against.* THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing the Stock Owned by the State of North Carolina in said Company; John D. Whitford, Chas. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wooten, President and Directors of said Company, and J. M. Worth, Treasurer of said State.	In Equity.

To the honorable the judges of the circuit court of the United States for the eastern district of North Carolina:

William E. Christian brings this his bill of complaint in behalf of himself and all other holders of certain bonds or certificates of debt issued by the State of North Carolina under authority of "An act to incorporate the Atlantic & North Carolina Railroad Company and the North Carolina & Western Railroad Company," ratified the 27th day of December, A. D. 1852, and of "An act to amend an act entitled An act to incorporate the Atlantic & North Carolina Railroad Company and the North Carolina & Western Railroad Company," ratified the 12th day of February, 1855, who shall come in and contribute to the expenses of this suit against the Atlantic & North Carolina Railroad Company, John D. Whitford,
4 president, and Chas. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. K. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, John C. Wooten, directors of said company, and F. M. Simmons, proxy, representing the stock owned by the State in said company, and J. M. Worth, treasurer of said State.

And thereupon your orator complains and says:

I. That he is now and was at the commencement of this suit a citizen and resident of the city of Richmond and State of Virginia.

II. That by an act of the General Assembly of the State of North Carolina, entitled "An act to incorporate the Atlantic & North Carolina Railroad Company and the North Carolina & Western Railroad Company," ratified the 27th day of February, A. D. 1852, a company was authorized to be formed, to be called "The Atlantic & North Carolina Railroad Company," for the purpose of constructing a railroad to be used and operated with steam motive power, to commence at the most eligible point on the harbor of Beaufort, Carteret

county, and to connect with the North Carolina railroad at its terminus near Goldsborough.

III. That immediately after the passage of the said act such proceedings were had in pursuance thereof that the Atlantic & North Carolina Railroad Company was duly organized and became and was and hitherto hath been and still is a body corporate and politic under the name and style aforesaid, and the defendants, John D. Whitford, Charles C. Clark, W. T. Caho, J. C. Davis, Henry F. Grainger, P. F. Faison, J. K. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wooten, are the president and directors of said company and the officers and managers thereof.

IV. That the State of North Carolina is the owner of a large number of shares of the capital stock of said company, and by the charter thereof and amendments thereto the Governor of said State is authorized to appoint a proxy to represent the stock of said State in all the meetings of the stockholders of said company, and in the exercise of this power the Governor of the said State has appointed the defendant, F. M. Simmons, proxy of said State.

V. That the defendant company is a corporation duly created as aforesaid under and by virtue of the laws of the said State, and has its office and principal place of business in the eastern district thereof, and the other defendants are each and every of them citizens of the said State, and reside in the said eastern district thereof.

VI. That the capital stock of said company was fixed at nine hundred thousand dollars, divided into shares of one hundred dollars each; but by the amendatory act above referred to, ratified on the 12th day of February, 1855, the said company was authorized to increase its capital stock to one million six hundred thousand dollars, and to further increase the capital stock to an amount sufficient to complete the railroad of said company between the termini named.

VII. That for the purpose of aiding the said company to build its said railroad it was further provided by the said act last above cited that whenever it shall appear to the board of internal improvements in this State that one-third of the capital stock of said company has been subscribed for and taken by solvent individuals or companies and that at least three hundred thousand dollars has been paid into the hands of the treasurer of said company the said board of internal improvements shall be authorized and required to subscribe on behalf of the State for two-thirds of the capital stock of said company, and the subscription shall be paid in the following manner, to wit: The one-fourth part as soon as said company shall commence work, and one-fourth part thereof every six months thereafter until the whole subscription shall be paid: Provided, That the board of internal improvements shall be satisfied by the certificate of the treasurer and president of said company that an amount of private subscription has been paid equal in proportion to the amount paid by the State.

VIII. That it was further provided by said act that in case the

Legislature then in session should not provide the means to pay said instalments of subscription, then the board of internal improvements was authorized to borrow money for that purpose on the credit of the State; and that in case it should become necessary to borrow money for the purpose of paying the said subscription, the public treasurer should issue the necessary bonds, with coupons attached, signed by the Governor and countersigned by the
6 public treasurer and sealed with the great seal of the State, and made payable to —— —— or bearer, the principal to be payable at the end of thirty years from the date of the bonds, and the coupons of interest payable semi-annually in such form as may be prescribed by the public treasurer, and both bonds and coupons payable at such bank or place in the city of New York or at the office of the public treasurer in Raleigh, as the said treasurer may think proper.

IX. That it was further provided by the said act that, as security for the redemption of said certificates of debt, the public faith of the State of North Carolina is hereby pledged to the holders thereof, and in addition thereto all the stock held by the State in the Atlantic and North Carolina Railroad Company hereby created shall be pledged for that purpose, and any dividends of profits which may from time to time be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said coupon bonds; but until such dividends of profits may be declared it shall be the duty of the treasurer, and he is hereby authorized and directed, to pay all such interest, as the same may accrue, out of any money in the treasury not otherwise appropriated.

X. That under the authority of said act the board of internal improvements, on behalf of said State of North Carolina, did subsequently subscribe to the capital stock in the said Atlantic and North Carolina Railroad Company, the defendant, to the amount of two-thirds of the capital stock thereof, to wit, about one million and sixty-six thousand six hundred dollars, for which subscription ten thousand six hundred and sixty-six shares of the capital stock of said company was issued to the said State of North Carolina, which said ten thousand six hundred and sixty-six shares of said capital stock, together with certain other shares of said stock subsequently acquired, amounting in all to twelve thousand six hundred and sixty-six shares, is still owned by the State.

XI. That in payment for said stock, by virtue of the said act of the General Assembly of the said State, the public treasurer of said State did issue bonds or certificates of debt of the said State of North Carolina to the amount of over one million of dollars at the times following, to wit, first day of January, 1856, on the first
7 day of January, 1857, and first day of July, 1857, and that the said bonds or certificates of debt are all of the denomination of five hundred dollars each, and are in tenor and effect as follows:

$500.00. $500.00.

UNITED STATES OF AMERICA.

It is hereby certified that the State of North Carolina is justly indebted to —— —— or bearer five hundred dollars, redeemable in good and lawful money of the United States, at the Bank of the Republic, in the city of New York, on the first day of January, eighteen hundred and eighty-six, with interest thereon at the rate of six per cent. per annum, payable half-yearly, at the said bank, on the first days of July and January in each year from the date of this bond until the principal be paid, on surrendering the proper coupon hereto annexed. In witness whereof the Governor of the said State, in virtue of power conferred by law, hath signed this bond and caused the great seal of the State to be hereunto affixed, and her public treasurer hath countersigned the same at the seat of Government of the said State, this first day of January, eighteen hundred and fifty-six.

The great seal of the State of North Carolina.

(Signed) THOMAS BRAGG, *Governor.*

Countersigned:
D. W. COURTS,
Public Treasurer.

Issued under an act to amend an act entitled An act to incorporate the Atlantic & North Carolina Railroad Company and the North Carolina & Western Railroad Company, chapter 232.

XII. That he is the *bona fide* holder for value of —— of said bonds or certificates of debt of the issue of 1st January, 1856, numbered as follows: 87, 153, 196, 201, 198, 141, 81, 176, 24, 138; all of which have coupons attached, payable 1st January, 1869, and semi-annually thereafter, amounting to the sum of forty-five hun-
8 dred dollars; all of which bonds or certificates, with coupons attached, your orator has now in his possession and stands ready to and will produce as your honors may direct.

XIII. That the State of North Carolina, since the year 1868, has neglected and refused to make any provision for the payment of the interest upon the aforesaid bonds or certificates of debt as the same became due and payable, either at the Bank of the Republic, in the city of New York, the place appointed for the payment of the same, or at any other place, and has neglected and refused to pay the same; and that the said State of North Carolina was at the commencement of this suit and is now indebted to the holders of said bonds or certificates of debt, among whom is your orator, in the sum of over two hundred thousand dollars for arrears of interest on said bonds, and the said State is now indebted to your orator in the sum of forty-five hundred dollars for arrears of interest on the said bonds or certificates of debts held by him as aforesaid.

XIV. That the aforesaid certificates of debt or bonds are by virtue of the act of the General Assembly of the said State of North

Carolina hereinbefore recited and of the pledges therein made by the said State a lien upon the ten thousand six hundred and sixty-six shares of the stock owned and held by said State in the said The Atlantic & North Carolina Railroad Company, in payment for which the said bonds or certificates of debt were issued, and upon all dividends of profits that have been and that may hereafter be declared upon said stock, and that the holders of said certificates, among whom is your orator, are in equity and good conscience entitled to have and receive all such dividends of profits as the same are paid for and upon account of the interest due and accruing on said certificates.

XV. That it appears from the report of the officers and managers of said company, made to the general annual meeting of stockholders in June, 1881, that the said railroad company, for the fiscal year preceding the said meeting, had received more money than was expended in running and operating the said road. At or immediately after said meeting the company made a lease of
9 its road, franchise, and all its property to the Midland North Carolina Railroad Company for the sum of forty thousand dollars per year, the lessee further agreeing to keep the said road and all the property of said company in good repair and working order; that these sums not being required for the necessary expenses of said company, or a large part thereof, should have been distributed to and among the stockholders of said company by way of dividends, and that the holders of the coupons of said bonds or certificates, among whom is your orator, are entitled in equity and good conscience to have whatever sum may be received by the State as and for dividends on the stock owned by said State in said company appropriated to the payment of the interest due and in arrears on said bonds; but what disposition has been made of said surplus income of said company your orator has no information and therefore cannot state.

XVI. That on the 1st day of July, 1881, the said company defendant, through its proper officers, entered into a contract of lease with the Midland North Carolina Railway Company to lease to said last-named company all its property and rights of every kind and description for the term of thirty years at an annual rent of forty thousand dollars, and providing, among other things, that the said rents should be applied after payment of taxes and expenses of keeping up its organization, then to the payment of interest on its bonded and other indebtedness, and then to the payment of the principal thereof, and that no dividend should be declared until said indebtedness shall have been extinguished; that the said Midland North Carolina Railway Company having failed to comply with its contract, the said lease has been declared forfeited and rescinded and all the property of defendant company has been restored to the proper officers and managers thereof, and is now being used and operated by said company defendant, through its own officers and agents, under its charter and amendments thereto.

XVII. That your orator is informed and believes, and therefore so charges, that it is the purpose and intent of a large number of

the stockholders of said company, together with several of the directors and officers thereof, to again lease out the said road and all its franchises and property of every description, and that such
10 purpose and intent is now entertained by said company or a large part of the stockholders thereof is made manifest by the following facts:

(1.) That at an adjourned meeting of the stockholders of said company defendant, held at Goldsborough in November, 1882, the directors of said company were authorized and directed to receive proposals for the leasing of said road and all the property and franchises of said company, which proposals were to be submitted to a called or regular meeting of the stockholders of said company for their acceptance or rejection.

(2.) The regular annual meeting of the stockholders of said company was held at Morehead City, commencing on the 28th day of June, 1883. At this meeting three propositions for the leasing of said road, with all the property, rights, and franchises of said company, were submitted to said stockholders, and after debate a resolution in the following words was adopted by said meeting:

"Resolved, That it is the sense of this meeting that the Atlantic and North Carolina Railroad be leased to the Eastern North Carolina Railroad Company, or any other corporation or person, upon proper terms, and that a committee of five be appointed to receive and formulate such propositions as may be made to them for the said lease, and to report to an adjourned meeting of this company to be held on the last Thursday in July, 1883, at Morehead City.

(3.) Very soon after the passage of this resolution the meeting adjourned, to meet again at Morehead City, on Thursday, the 26th day of July, 1883.

(4.) That a company has been formed, called the Eastern North Carolina Railroad Company, the principal, if not the only, purpose of which is to lease all the property of the defendant company for fifty years or some very long period of time, and that two or more of the directors of the defendant company are largely interested in this new company, and they and their associates forming said new company own and control a very large amount of the stock of the defendant company, which is so divided among different persons as to give them control of a majority of the votes which may be cast in any stock vote of said company.

11 (5.) Your orator has reason to believe from the formation of the new company, and the votes cast by the parties concerned therein at the last meeting of said stockholders, and the policy pursued by said parties in said meeting, and from what he is informed is the avowed purpose of those engaged in forming said new company, that it is the well-settled purpose of said parties to lease the property of defendant company to said new company at the adjourned meeting to be held on the last Thursday in July as aforesaid, and one of the principal reasons for the adjournment of the said meeting was to enable said new company to fully perfect its organization, which was not complete at the time of the last meeting, and thereby to place said new company in a position in

which it might be able to enter into and legally execute a contract with defendant company for the lease of its said road and all its property as aforesaid.

(6.) That very few votes were cast in said meeting against the passage of said resolution declaring the sense of the said meeting.

From all which facts and other facts, not necessary here to be stated, your orator avers and charges that it is the purpose of those controlling a majority of the votes of said stockholders to make some contract of lease of said road and property, rights and franchises, of said defendant company.

XVIII. That, as your orator is informed, the right of said company to lease its said road and all its property and franchises is claimed under the provisions of the 18th section of its charter, which is in the following words:

"That the said company may, when they see proper, farm out the right of transportation over said railroad, subject to the rules abovementioned, and the said company and every person who may have received from them the right of transportation of goods, wares, and produce on said road shall be deemed a common carrier as respects all goods, wares, and merchandise entrusted to them for transportation."

XIX. That by the seventeenth section of the said charter it is provided as follows:

12 "That the said company shall have the exclusive right of carrying or transporting of persons, goods, merchandise, and property over the said railroad to be by them constructed at such charges as may be fixed on by a majority of the directors."

XX. Your orator insists, being so advised, that the eighteenth section of the charter above stated gives to the said company defendant no power thus to alienate the especial property of the company or to delegate and transfer the important powers and franchises conferred by the charter upon said company, and to do so would be in violation of the provisions of the charter and a failure to discharge the important and valuable functions and duties assumed by it and *ultra vires* its corporate power.

XXI. That your orator further objects to the granting of the lease of said road and all the property and franchises of said company because, as he is informed and believes and therefore so alleges, the rent offered to be paid for said property is very inadequate and much less than its real value, and if it should be rented on the terms offered or on any other terms likely to be obtained at the present time, such leasing would be very injurious to if not destructive of his rights and interest as a holder of the said bonds of the State aforesaid.

XXII. That the holders of the said bonds, having a lien on the said stock for the payment of the principal and interest of their said debt, are in equity the real owners of said stock, and that the same should be applied by said State, through its proper officers, to the payment of said debt, and that the State should do nothing herself nor allow anything to be done by her officers or by her associates in said company which would destroy or impair the value of this

security to her said creditors, and he insists, being so advised, that it is contrary to equity and good conscience for the proxy of the State to give his consent and thereby the consent of the State to any contract of lease to be made by said company, without the consent and concurrence of the holders of said bonds, until the State shall have made adequate provisions for the payment of said debt, both principal and interest.

13 To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several respective corporal oaths and according to the best and utmost of their several and respective knowledge, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written they are respectively required to answer—that is to say:

(1.) Whether the company defendant is not a corporation created by an act of the General Assembly of the State of North Carolina for the purposes and with the powers hereinbefore recited, and whether the defendant, John D. Whitford, is the president, and the defendants, Charles C. Clark, Henry F. Grainger, Paul F. Faison, Council S. Wooten, Jacob E. Parrott, Wm. T. Caho, James C. Davis, Eugene Morehead, John C. Wooten, and John Gatling and James A. Bryan, or either or any of them, and which of them, are directors of said corporation, and whether the defendant F. M. Simmons is proxy of the said State.

(2.) Whether it was not provided in the act amending the said charter of said corporation that the capital stock should be increased to one million six hundred thousand dollars, and that the board of internal improvements should subscribe for two-thirds thereof, as hereinbefore set forth, or how otherwise; whether it was not also provided in said act that said subscription should be paid in the manner as hereinbefore recited, or how otherwise.

(3.) Whether it was not provided further in said act that in payment of said subscription the public treasurer of said State should issue certificates of debt in sums of not less than one thousand dollars each, pledging the State of North Carolina for the payment thereof, with interest thereon, as is hereinbefore more specifically set forth, or how otherwise.

(4.) Whether it was not further provided in said act that, as security for the redemption of said certificates of debt, the public faith of the State of North Carolina was pledged to the holders thereof, and, in addition thereto, was not all the stock held

14 by the State in the said Atlantic & North Carolina Railroad Company, defendant, and also all dividends of profits that should be declared on said stock specially pledged for that purpose, and whether it was not also provided that said dividends of profit should be appropriated to the payment of the interest that should accrue on said certificates of debt as is hereinbefore in that behalf stated, or how otherwise.

(5.) Whether under the authority of said act the board of internal improvements or some of them, on behalf of the said State of North

Carolina, did not subscribe to the capital stock of said corporation to the amount of one million and sixty-six thousand six hundred dollars or to some other, and what, amount.

(6.) Whether ten thousand six hundred and sixty-six shares or more or less, and how many, shares of the capital stock of the said Atlantic & North Carolina Railroad company were not issued to the said State of North Carolina or to some person, and who, on behalf of said State, for said subscription, and are not said shares now owned and held by said State or by some one, and who, in her behalf.

(7.) Whether the public treasurer of the State of North Carolina or some other person, and who, duly authorized by said State in that behalf, for the purpose of paying the amount of said subscription for ten thousand six hundred and sixty-six shares of the capital stock of the Atlantic & North Carolina Railroad Company last aforesaid, did not issue, on the days and times hereinbefore in that behalf more specifically set forth, bonds or certificates of debt of the State of North Carolina to the amount of one million and sixty-six thousand six hundred dollars or for some other, and what, amount in certificates of debt of one thousand dollars each, and payable to the bearer at the expiration of thirty years or some other, and what, time from the date of their issue, with interest thereon at the rate of six per cent. per annum, payable half-yearly, as hereinbefore set forth, and are not the said certificates of debt hereinbefore correctly set forth according to their tenor and effect; and, if not, wherein is the difference, and set forth the same correctly.

(8.) Whether the ten (10) certificates hereinbefore set forth,
15 now held by your orator, were not issued by the State of North Carolina under the authority of the aforesaid act amending the charter of said corporation, as hereinbefore set forth, in part payment of the subscription by the said State to the capital of said company, and are not the said certificates still due and unpaid, or how otherwise.

(9.) Whether the State of North Carolina has not since the 1st day of October, 1868, or since some other, and what, time neglected and refused to pay the interest as the same became due and payable upon the aforesaid certificates of debt of the several issues thereof, as hereinbefore set forth, and was the said State on the 1st day of July, 1883, and is she not now indebted to the holders of the said certificates in the amount hereinbefore set forth or in some other, and what, amount.

(10.) Whether the said State is not now indebted upon the certificates hereinbefore set forth, now held by your orator, for interest due and unpaid thereon, in the amount hereinbefore mentioned or in some other, and what, amount.

(11.) Whether the certificates of debt hereinbefore mentioned and described are not by virtue of the acts of the General Assembly of the said State hereinbefore recited and of the pledges therein contained a lien upon the stock in the Atlantic & North Carolina Railroad Company owned and held by the State of North Carolina, for the payment of which the said certificates of debt were issued, and

also upon all the dividends of profit that have been or that hereafter may be declared upon said stock, and whether the holders of said certificates are not entitled to all such dividends of profit as hereinbefore set forth, or how otherwise.

(12.) Whether the Atlantic & North Carolina Railroad Company has not for one or more years received more money than was expended in its running and operating expenses, and how much and what disposition or appropriation has been made each year of such surplus.

(13.) Whether it is not the purpose and intent of a large number of the stockholders in said company defendant, including three of said directors, to make some contract of lease of the property of said defendant company to the Eastern North Carolina Railroad
16 Company or to some other persons or company, and whether the meeting of stockholders of said defendant company was not adjourned to the last Thursday in July, 1883, in order to carry this purpose into effect.

(14.) Whether the defendants, James A. Bryan, John C. Wooten, and John Gatling, three of the directors in the company defendant, and many others of the stockholders in said company, are not also stockholders in the Eastern North Carolina Railroad Company, and whether said new company was not formed and organized for the purpose mainly of making the said lease from the Atlantic & North Carolina Railroad Company, and whether it is not now the intention of the said new company to make such lease.

And that it may be declared and decreed by your honors that the certificates of debt hereinbefore mentioned are a lien for the benefit of the holders thereof upon the stock owned and held by the State of North Carolina in the Atlantic & North Carolina Railroad Company, in payment for which the said certificates of debt were issued, as hereinbefore stated, and also upon any and all dividends of profit that may be declared thereon until said certificates and the interest due thereon are redeemed by the State.

And that any and all moneys that are now payable on said stock as dividends of profit or that may hereafter be declared as dividends thereon may be decreed to be paid to your orator and the other holders of said certificates who may come in and contribute to this suit, in equal dividends, in proportion to the amounts they hold, in payment of the interest due and unpaid upon the said certificates until the same is paid; and, if the said dividends shall prove insufficient for that purpose, that a sale of said stock, or so much thereof as may be necessary to satisfy the just rights of your orator and the other holders as aforesaid of said certificates, may be made under the directions and decree of your honors.

And that an account may be taken, by and under the directions and decree of your honors, of the amount due for arrears of interest by the said State to your orator and the other holders of said certificates as aforesaid.

And that a proper person may be appointed by your honors
17 to take into his possession any and all moneys hereafter to be paid by the Atlantic & North Carolina Railroad Company as dividends of profit on said stock.

And that in the meantime, and until the further order and decree of your honors, the Atlantic & North Carolina Railroad company and its officers and directors, defendants, may be restrained and enjoined by the order and injunction of your honors from paying to the defendant, John M. Worth, or to any other person who may on behalf of the State of North Carolina demand the same, and that said John M. Worth may be restrained and enjoined by order and injunction of your honors from receiving from said company, its officers and directors, any and all moneys accruing and payable as dividends on said stock.

And that until the further order and decree of your honors the Atlantic & North Carolina Railroad Company, its officers and directors, defendants, be restrained by the order and injunction of your honors from making any contract for the sale or lease of its railroad and other property and franchises to any person, company, or corporation on any terms whatsoever.

And your orator further prays for all such other and further relief as will secure to him and to all others who shall become parties to this action their just rights in the premises, as equity and good conscience may require and to your honors may seem meet.

May it please your honors to grant unto your orator, not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the Atlantic & North Carolina Railroad Company, John D. Whitford, president; Charles C. Clark, Henry F. Grainger, Paul F. Faison, Council S. Wooten, Jacob F. Parrott, William T. Caho, James C. Davis, Eugene Morehead, John C. Wooten, James A. Bryan, and John Gatling, directors of said company, and F. M. Simmons, proxy, and John M. Worth, commanding them to appear and answer unto this bill of complaint and to abide and perform such decree
18 and order in the premises as to your honors shall seem meet and be required by the principles of equity and good conscience.

And your orator will ever pray, &c.

W. E. CHRISTIAN.

JOS. B. BATCHELOR,
Solicitor for Complainant.

NOTE.—Each defendant is required to answer the foregoing interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.

UNITED STATES OF AMERICA,
Eastern District of Virginia:

On the 20th day of July, A. D. 1883, came William E. Christian, the complainant in the foregoing bill named, who, upon his solemn oath, says that so far as the statements contained in the said bill of complaint are within his own knowledge they are true, and so far as they are derived from the information of others he verily believes them to be true.

Given under my hand, at Richmond, in said district, this 20th day of July, 1883.

M. F. PLEASANTS,
U. S. Commissioner, Eastern Dist. of Virginia.

Endorsed: O. B. Filed July 21, 1885. N. J. Riddick, clerk, by V. Royster, deputy clerk.

And on the said 21st day of July, A. D. 1883, an order setting the application for injunction in this case down for hearing is made by his honor Hugh L. Bond, circuit judge, and entered of record and a certified copy of the bill of complaint and of the order issued to the marshal of this district July 21, 1883; which said order is in the words and figures as follows, to wit:

Order Setting Down for Hearing Application for Injunction.

Ordered, this 21st day of July, 1883, that the application for injunction in this case be set down for hearing on the last Monday in November, 1883, at Raleigh, North Carolina, provided a copy of this bill and of this order be served on the defendants or their counsel on or before the 1st day of October, 1883, unless an earlier day for the hearing thereof shall be appointed, of which notice of not less than ten days shall be served on the defendants or their counsel.

HUGH L. BOND,
Circuit Judge.

19 And thereupon, at the request and by the direction of the said complainant, William E. Christian, by his solicitor aforesaid, a writ of subpœna is issued, in pursuance of the prayer of the said bill of complaint, against the said defendants, returnable on the first Monday in September, 1883; which said writ of subpœna is in the following words and figures, to wit:

Writ of Subpœna.

UNITED STATES OF AMERICA, }
Eastern District of North Carolina, } *ss:*

The United States of America to The Atlantic & North Carolina Railroad Company, F. M. Simmons, proxy, representing the stock owned by the State of North Carolina in said company; John D. Whitfort, C. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrot, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wooten, president and directors of said company, and John M. Worth, treasurer of said State:

We command you and every of you that you appear before the judges of our circuit court of the United States of America for the

eastern district of North Carolina, at the office of the clerk of said court, in the city of Raleigh, in said district, on the first Monday in the month of September next, to answer the bill of complaint of William E. Christian, filed in the clerk's office of said court, in said city of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of North Carolina to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the 21st day of July, 1883, and in the one hundred and eighth year of the Independence of the United States.

Issued 21st day of July, 1883.

[Seal of U. S. Circuit Court.]

N. J. RIDDICK, *Clerk*,
By V. ROYSTER,
Deputy Clerk.

MEMORANDUM.—The within-named defendants are notified
20 that unless they enter their appearance in the clerk's office of said circuit court, at Raleigh aforesaid, on or before the day to which the within writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

N. J. RIDDICK, *Clerk*,
By VITRUVIUS ROYSTER,
Deputy Clerk.

And on the return day of writ, to wit, on the first Monday in September, 1883, the same being a rule day, at the clerk's office of this court, the marshal comes and makes return of said writ, and also of the order and copy of bill of complaint, in the words and figures as follows, to wit:

Marshal's Return.

Executed this writ on the 26th day of July, 1883, by service of a true copy of this subpœna, together with a certified copy of the bill and order of court, personally on J. D. Whitford, president of the Atlantic and North Carolina Railroad Company, and on F. M. Simmons, proxy, representing the State; John D. Whitford, C. C. Clark, H. F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, Jas. A. Bryan, and J. C. Wooten, directors, and on J. M. Worth, treasurer of the State of North Carolina, by delivering to each of them a true copy of this equity subpœna.

J. B. HILL.
U. S. Marshal, East. Dist. N. C.

21 *Appearance of Defendants.*

And thereupon, to wit, on the 5th day of September, 1883, Battle & Mordecai enter their appearance as solicitors for F. M. Simmons, State proxy, J. M. Worth, treasurer, and the directors appointed by the State, as of rule day September 3rd, 1883.

And afterwards, to wit, on the 8th day of September, 1883, C. C. Clark, T. C. Fuller, and John Gatling enter their appearance as solicitors for the Atlantic & North Carolina Railroad Company, and T. C. Fuller and John Gatling enter their appearance as solicitors for private directors of the Atlantic & North Carolina Railroad Company, as of rule day September 3rd, 1883.

Time by consent allowed State proxy and treasurer to answer.

And thereafter, to wit, on the 13th day of September, A. D. 1883, the State proxy and treasurer are allowed until the first Monday in November, 1883, to file answers as of rule day in October, 1883, by consent in writing in the words as follows:

22 W. E. CHRISTIAN *v.* THE A. & N. C. RAILROAD *et al.*

The attorney for the State proxy & treasurer having entered appearance in the above suit in the U. S. circuit court, it is agreed that said defendants may have until rule day in November to file answer, to be filed as of rule day in October, two cases, this to apply to both cases.

BATCHELOR,
Att'y for Pl'ff.

And thereafter, to wit, on the 3d day of November, 1883, as of rule day in October, 1883, the answer of F. M. Simmons, as proxy, representing the stock owned by the State of North Carolina in the said Atlantic and North Carolina Railroad Company, and of John M. Worth, as treasurer of said State, to the said bill of complaint of William E. Christian, and also a statement of receipts and disbursements by the Atlantic and North Carolina Railroad Company from May 31st, 1881, to October 1st, 1883, are filed by Thos. Ruffin and Battle & Mordecai, solicitors for defendants; which said answer and the statement of receipts and disbursements therewith filed are as follows, to wit:

23 *Answer of F. M. Simmons, as Proxy, and of John M. Worth, as Treasurer of State of N. C.*

Circuit Court of the United States in and for the Eastern District of North Carolina.

WILLIAM E. CHRISTIAN *against* THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing the Stock Owned by the State of North Carolina in said Company; John D. Whitford, Chas. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wooten, President and Directors of said Company, and J. M. Worth, Treasurer of said State.	In Equity.

The answer of F. M. Simmons, as proxy, representing the stock owned by the State of North Carolina in the said Atlantic & North Carolina Railroad Company, and John M. Worth, as treasurer of said State, defendants, to the bill of complaint of William E. Christian, plaintiff.

These defendants, reserving to themselves all right of exception to the said bill, for answer thereto say—

I. That they presume it to be true and therefore admit that the plaintiff is now and was at the commencement of this suit a citizen and resident of the State of Virginia, and that by an act of the General Assembly of the State of North Carolina, with the title as set forth in the second article of said bill, the defendant corporation was chartered and the company authorized to be formed for
24 the purposes set forth in said bill, and that in pursuance thereof the said company, under its corporate name, was duly organized. A copy of said charter will be filed, if required, and the same is prayed to be taken as a part of this answer; that by a subsequent act, as alleged in said bill, the said company was authorized to increase its capital stock and did do so, and for the purpose of aiding the said defendant company in building its road it was provided by the said last-mentioned act, ratified the 12th day of February, 1855, that upon certain conditions as set forth in said act, and as are truly set forth in the seventh article of the plaintiff's said bill, two-thirds of the capital stock of said company was authorized to be subscribed for in the name of said State of North Carolina, and upon the said conditions having been complied with the same was subsequently done, as will more fully appear by reference to said last-mentioned act, which will also be filed, if required, and prayed to be taken as part of this answer; that in pursuance of the said acts and in consequence of the defendant company having become a corporate body, the defendants, John D. Whitford, Chas. C. Clark, W. T. Caho, J. C. Davis, Henry F. Grainger, P. F. Faison, J.

F. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wooten, now constitute the president and board of directors of said company, the first eight named being the directors named on the part of the State of North Carolina as a stockholder and the last four those elected by the stockholders in their general meeting, the proportionate share of stock held by the State and that held by private individuals being as set forth in the plaintiff's said bill, and the company's office and chief place of business being as therein stated, and the residence of the other defendants as set forth therein, and the capital stock of the said company as stated in plaintiff's said bill; that in order to pay for the stock subscribed for in behalf of the said State of North Carolina the public treasurer of the State was authorized to issue, and did issue, the necessary bonds, with coupons attached, signed and authenticated as required by the said last-mentioned act and made payable as therein directed, the principal to be due at the end of thirty years
25 from their date and the coupons for interest being payable semi-annually, the form of said bond being as set forth in the eleventh article of the said bill; that it is also true that by the terms of said last-mentioned act and as a security for the redemption of said bonds the public faith of the State of North Carolina was pledged to the holders thereof; and it was further provided that, "in addition thereto, all the stock held by the State in the Atlantic & North Carolina Railroad Company hereby created shall be pledged for that purpose, and that any dividends of profits which may from time to time be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said coupon bonds; but until such dividends of profit may be declared it shall be the duty of the treasurer, and he is hereby authorized and directed, to pay all such interest, as the same may accrue, out of any moneys in the treasury not otherwise appropriated;" that whether the plaintiff is a *bona fide* holder for value of any of said bonds these defendants do not know and are wholly without information in regard thereto, as well as to the times when he acquired the same, if any he does hold, and require the plaintiff to make proof thereof. They further admit the failure of the State, as alleged in the said bill, to pay the interest upon said bonds, and that if the plaintiff be the owner of the bonds mentioned in said bill and the unpaid coupons belonging thereto there is due him for arrears of interest the sum therein mentioned.

II. These defendants, further answering, say that they cannot take upon themselves to say with certainty whether the inferences which the plaintff makes from the provisions of the said acts as to the lien of the holders of said bonds upon the State's stock in said company and any dividends that may be declared thereon are correct or not; and, being but legal inferences, depending upon the construction that may be given by the courts of the terms of said acts, they are advised that they need not make answer thereto; but, notwithstanding this, they say that they are advised that inasmuch as no mortgage or other instrument or pledge to give force and effect to such a lien was ever executed by the State or any one for

her, it admits of grave doubt whether any such lien exists in
26 favor of the holders of said bonds, and that certainly, according to the plain intent of the last-mentioned act, no lien was given or intended to be given for the interest secured by the coupons attached to the said bonds upon the said stock of the State until the full maturity of principal of said bonds and the period for their redemption may arrive, to wit, full thirty years after their respective dates.

III. These defendants, further answering, say that it is true that at the end of the fiscal year ending May 31st, 1881, and, as was reported to the annual meeting of the stockholders of defendant company in June of that year by its officers, the said company had in hand a considerable sum of money, derived from its earnings of the preceding year, in excess of the amount necessary to run and operate its road, and that there has likewise been a surplus derived from the earnings or rent of said road at the end of each of the two subsequent fiscal years; but they say that this surplus, as they are informed and believe and as the plaintiff must have been informed at the time of filing his bill, has been applied to the payment of the interest on the mortgage debt of said company and in part satisfaction of a decree in this court against said company in favor of the personal representative of the late John M. Morehead (a large part of which decree still remains unsatisfied), and in making necessary repairs of the road-bed, rolling stock, bridges, and other property of the company, and in payment of taxes and defraying other expenses which were deemed to be and were necessary and essential to the continued operation and existence of the road; and, that the court may have a full understanding of every dollar received by said company and the sources from whence derived and how expended, these defendants file with this their answer and as part thereof a detailed statement of all receipts and disbursements within the period aforesaid; and they are advised that it was the first duty of the officers and agents of the company to pay the interest on its debt and to keep the road in repair and defray other necessary expenses as aforesaid rather than declare dividends to its stockholders, and certainly they submit it was one of those things which by the terms of the charter of the company were committed to the
27 discretion of the board of directors, who had the management of its affairs, and which discretion this court will not, as these defendants are advised, undertake to control or direct, and especially as there is no suggestion of fraud or a fraudulent purpose on the part of said board.

IV. These defendants, further answering, say that it is true, as alleged in the sixteenth article of said bill, that the said board of directors, with the sanction of the stockholders, declared in their general meeting, did lease to the Midland North Carolina Railroad Company the road of the defendant company, together with all its property of every kind, for the term of thirty years, and upon the stipulations and agreements set forth in said article; and it is also true that the said lessee afterward failed to comply with its undertakings, and in consequence thereof the defendant company was

forced to resume the possession and management of its said road and property, in which it has continued to the present day.

V. These defendants, further answering, say that it is true, as alleged in the seventeenth article of said bill, that at a meeting of the stockholders of the defendant company held in November, 1882, the propriety of making a further lease of the said road and property was considered, and, in order to obtain information so as to act judiciously, the board of directors were instructed to receive proposals from all parties who might desire to lease, and to report thereon to the next meeting of the stockholders; that accordingly, at their next meeting, held in June, 1883, divers propositions for leasing said road and property were submitted. Except as manifested at said meeting, these defendants have no means of knowing the purposes or intentions of either the stockholders or board of directors or any of them as to leasing said road and property. At said meeting, judging from the tenor of the discussions and votes, the sentiments of a large majority of the stockholders seemed to be, and these defendants believe was, in favor of making a lease, provided the same could be made upon terms advantageous to all parties. At the meeting last referred to, still wishing to be better informed as well as to the propriety of making any lease and the preference to be given among the several propositions submitted, the stockholders
28 again adjourned the matter, having appointed a committee of five of their members, all enjoying the highest reputation for integrity and discretion, to maturely consider the question of leasing and report upon the several propositions before said meeting, and any other that might be submitted to them; and, in order that they might have time to do so, the meeting of the stockholders was adjourned to the 26th day of July, 1883. Among the propositions submitted was one from a company known as the Eastern North Carolina Railroad Company, and this, with the others, was referred to said committee to be passed upon. These defendants believe it to be true that several persons who owned stock in the defendant company were likewise stockholders in the said Eastern North Carolina Railroad Company, and that three of the directors of defendant company were stockholders of said Eastern North Carolina Railroad Company. This fact was not concealed from the stockholders of the defendant company at their meeting in June, 1883, but was frankly admitted and generally understood, and hence the stockholders, instead of referring the question involved to their board of directors, as they had done at a previous meeting, referred them to a special committee of five stockholders, wholly disinterested, and thereby avoided the danger and even the appearance of bias and favoritism. These defendants believe it to be true that said Eastern North Carolina Railroad Company was organized mainly for the purpose of leasing said road and property of the defendant company, but they have no reason to believe that the stockholders of the defendant company or anything like a majority of them had any purpose to make any lease that was not alike beneficial to the company, its stockholders and creditors, and to the State; and, answering for himself, this defendant, Simmons, says

that, as the proxy of the State in said meeting, he would not have given his concurrence to any propositions that did not, in his judgment, fulfill all these conditions, and that as such proxy he had it in his power, by withdrawing from the meeting, to defeat any proposition which seemed to him injudicious or unjust to any one, and more especially to the State or her creditors, and would unhesitatingly have done so; and, sure it is, that he took no part in
29 or in any way connived at any division of stock which gave to said Eastern North Carolina Railroad Company or any person interested therein an improper and unjust preference. Being called upon to vote upon the question of leasing said road and property, he gave to it his best consideration, honestly desiring to do what was best for all concerned; and seeing that the road was in bad condition, calling for large outlays of money for repairs, and that without its being either extended or forming its connections with other roads so as to reach the markets of the world it could never be more than barely self-sustaining, his best judgment was that it was advisable to effect a lease, by means of which proper connection might be made or the extension of the road secured, and experience seems to fully justify this conclusion, in the fact that even during the short duration of the lease to the Midland North Carolina Railroad Company there was more money paid into the treasury and applied to the payment of the defendant company's debts than had ever been before in the same length of time, after deducting the costs of proper and necessary repairs and other necessary expenses and charges. These defendants believe that it is still the purpose of those interested in the Eastern North Carolina Railroad Company, now that the same has been organized, to secure a lease from the defendant company of its road and property, but they deny that any adjournment of the meeting of the stockholders of the defendant company took place solely in order to enable the said Eastern North Carolina Railroad Company to complete its organization, but they say that the said adjournment was made, as hereinbefore stated, mainly with the view better to consider the propriety of leasing and to enable the stockholders and directors of the defendant company to determine between the propositions submitted. So far from its being true that there was any purpose to effect a lease for any inconsiderable sum, and so as to sacrifice the interest of the defendant company or of any other person interested for the benefit of said Eastern North Carolina Railroad Company, these defendants submit that the contrary will appear by a reference to the proposition submitted by said last-mentioned company, as the same is to be found at page thirty-three of the "Proceedings of the Twenty-ninth Annual Meeting of the Stockholders of the Atlantic & North
30 Carolina Railroad Company," a copy of which is herewith filed and prayed to be taken as a part of this answer.

VI. These defendants, further answering, say that they are advised that by its charter, as contained in the aforesaid acts of assembly, the defendant company has the right to make a lease of its road and other property; and, if this be not so, they are further advised that the said company has acquired that right by the subsequent

action of the General Assemby of the State of North Carolina in adopting a resolution on the 14th day of March, 1881, virtually conceding the right of the defendant company to lease its said road and other property, provided the same was done with the concurrence of its board of directors, it being true that after the passage of said resolution and in pursuance thereof the stockholders of said defendant company authorized at their meeting in June, 1881, their board of directors to make the lease to the Midland North Carolina Railway Company referred to in the plaintiff's bill, and the benefits of which he seeks to have, and the said lease was made by the said board of directors accordingly, thus, as these defendants are advised, making the resolution of the General Assembly referred to a part of the chartered privileges of said company.

These defendants are informed and also allege that at the meeting of the stockholders at which the lease last referred to was authorized no single stockholder entered his protest against the action of said meeting in that behalf or has ever been heard to complain of the action of the board of directors in respect thereto in any way of which notice could be taken by the courts, and they are advised that if the plaintiff was there as a stockholder he is estopped from denying the right of the defendant company to make a lease of its road and other property, and if not there as a stockholder he must claim from one who voted under such estoppel and is affected thereby; and if this be not so, inasmuch as the resolution referred to amounts to a legislative construction of the charter of defendant company, which construction has been acquiesced in and acted upon by the company and sanctioned by the decision of the highest court of the State upon a similar charter, these defendants are advised that this honorable court will respect the construction thus put upon said charter and give effect thereto; and they are
31 further advised that, conceding the right to make a lease, this court will not undertake to control the discretion of those upon whom the law has imposed the burden of managing the affairs of the company in the absence of direct and positive charge of fraud.

VII. These defendants, further answering, say that two certificates of stock, one for one thousand and sixty-six shares and the other for two hundred shares, have been issued to the State of North Carolina by the defendant company, which certificates, together with the stock represented thereby, are the property of the State and are in her possession and have been for a long time before the commencement of this suit, with authority in no one to part with the same except by the direction of the General Assembly of the State; and these defendants are advised that, so being the property of the State and in her actual possession, they cannot be taken therefrom or in anywise be affected by any decree rendered in a cause to which the State is not a party; and these defendants rely upon the fact that the State is not a party to this suit as if the same had been specially pleaded.

And these defendants, having fully answered, pray to be hence dismissed with their reasonable costs in this behalf expended.

THOS. RUFFIN.
BATTLE & MORDECAI,
Solicitors for Defendants.

CIRCUIT COURT OF THE UNITED STATES,
Eastern District of North Carolina:

F. M. Simmons, one of the defendants in this cause, being duly sworn, says that so far as the statements contained in the foregoing answer are within his own knowledge they are true, and so far as they are derived from the information of others he believes them to be true.

F. M. SIMMONS.

Subscribed and sworn to before me this 3d day of November, 1883.

N. J. RIDDICK, *Clerk.*

32 *Statement of Receipts and Disbursements of the A. & N. C. R. R. Co. Filed with Answer.*

DR. F. C. Roberts, treasurer, in % with the A. & N. C. R. R. Co. CR.

		1881.			
To balance May 31st, 1881..	$20,341 56	June.	By H. Davis, wood.....	120 00
" cash rec'd from conductors.....	536 20		" Queen Ins.Co., insurance	22 50
agents	5,581 06		" D. G. Smarr.....	20 85
So. Exp. Co.....	665 90		" A. Tilghman, wood	90 38
rents.....	8 50		" R. Whitford, surveying..	75 00
miscellaneous.....	20 25		" Squire George, X ties.....	19 02
			" A. W. Edwards, labor in shops.....	40 00
			" N. S. Richardson, printing.....	13 00
			" N. Butler, X ties.....	5 84
			" G. D Connor, wood	32 25
			" Joe McCoy, X ties.....	5 27
			" R. White, wood.....	81 68
			" do. lumber.....	13 25
			" Jno. Humphrey, killing cattle.....	5 00
			" Edward Hill, wood.....	27 90
			" Teltair, Snedeke & Tucker.....	25 97
			" G. B. Guion, rations.....	43 80
			" do. "	78 20
			" S. L. Dill.....	2 00
			" Henry Pelham, wood.....	22 50
			" W. F. Lofton, lumber.....	33 29
			" directors' pay-roll.....	90 00
			" V. A. Tolson, wood.....	13 50
			" G. Allev & Co., "	27 00
			" Newt. Gas Co., gas.....	12 63
			" Frank Dougherty, X ties..	2 77
			" M McCleese, X ties.....	7 07
			" S. Borden, wood.....	12 82
			" J. T. Derroris, wood.....	13 75
			" A.B. Kinsey, killing stock	2 00
			" C. Folbman, mdse.....	1 36
			" A. B. Kinsey, bal. as ag't..	1 25
			" C. L. Wetherington, X ties	19 05
			" J. F. Pickrell, legal exp...	25 00
			" Daily Nut Shell, adv	5 00
			" Hosford & Son, printing ..	55 75
			" I. Waskett, wood.....	79 98
			" J. A. Meadows, meal.....	18 20
			" W. W. Walker, steel rails..	1,118 23
			" S. M. Carpenter, adv.....	10 20
			" Jake Green, labor in shops	15 00

Statement of Receipts and Disbursements, &c.—Continued.

			1881. June.	By Jno. Coker	13 10
				" J. M. Kibler	13 45
				" G. W. Collier	2 00
				" Geo. Hatch, killing cattle	7 50
				" Wm. Dunn, ag't, sea f'g't on corn	198 10
				" Blount Harris, station hand	10 00
				" J. H. Wetherington, X ties	7 96
				" Allen Hardy, X ties	3 37
				" D. G. Seram, labor & rations	175 74
				" A. Tilghman, lumber	42 15
				" W. S. Bell, Jr., wood	299 02
		$27,153 47			
33					
1881. June.	To am't bal. for'd	$27,153 47	1881. June.	By J. W. Sanders, X ties	44 24
				" C. C. Clark, legal services	20 00
				" Cumbidaxe, Day & Co., mdse	51 03
				" D. Crugdon, lumber	48 12
				" T. Collins, labor	1 50
				" R. Williams, labor	22
				" Jos. Wetherington, labor	1 80
				" Wadsworth & Co., paints	25 62
				" W. G. Crowder & Co., mdse	17 50
				" W. Dunn, ag't, sea fr't	28 61
				" Jno. Spock, X ties	12 79
				" S. J. Spock, X ties	9 09
				" J. P. Bryan, wood	16 20
				" A. Miller, meat for rations	48 17
				" A. Miller, mdse	7 15
				" York Hill, charcoal	2 25
				" city of New Berne, tax	2 00
				" G. Allen & Co., mdse	2 32
				" Herveft & Co., wood	24 98
				" G. Spock, X ties	25 15
				" H. White, wood	2 50
				" R. D. Johnston, coupons	240 00
				" L. J. Johnston, int. on judg't	28 54
				" W. Dunn, ag't	30 00
				" Jake Green, work in shops	4 31
				" J. L. Morehead, coupon	1,380 00
				Do. interest	129 00
				Do. "	81 43
				Do. "	57 08
				Do. "	57 08
				Do. "	57 08
				" finance committee	40 00
				" O. D. S. S. Co., f'g't	3 02
				Do. "	15 92
				" W. Dunn, ag't. ch'ges on corn	50 00
				" W. R. Guion, shops	28 00
				" directors' pay-roll	190 00
				" F. C. Roberts, tr., in ac. exp	12 10
				" gen'l officers' pay-roll	468 33
				" shops' pay-roll	1,344 66
				" road "	851 13
				" Goldsborough station	169 60
				" La Grange "	61 89
				" Kinston "	98 00
				" New Berne pay-roll	496 80
				" Newport "	25 60
				" M. City "	103 25
				" mail train "	100 00
				" f'g't train "	115 00
				" incidentals	2 40
				By balance	17,418 46
		$27,153 47			$27,153 47

Statement of Receipts and Disbursements, &c.—Continued.

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1881.			1881.		
July.	To balance	17,418 46	July.	By Daily Nut Shell, adv.	17 00
	" cash rec'd from agents.	1,568 05		" H. Davis, wood.	105 75
	" Southern Exp. Co.	270 10		" aud'g committee, pay-roll	10 00
	" rents	21 90		" directors' pay-roll.	130 00
	" miscellaneous.	1,395 65		" A. W. Edwards, work in shops	80 85
				" A. L. Heath, wood.	12 15
				" J. E. Kornegay, wood.	56 03
				" W. Dunn, ag't.	7 51
				" J. W. Griffin, X ties.	7 41
				" J. A. Bonitz, adv.	11 00
				" M. C. Avery, int.	57 08
				" L. H. Walker, int.	57 08
				" D. G. Smarr, labor.	44 11
				" J. P. Parrott, lumber.	27 76
				" A. M. & O. R. R. Co., car mileage	19 07
				" L. G. Tillitser & Co., mdse.	142 88
				" J. A. Gray, coupons.	1,660 00
				" Tredegar Co., iron	129 25
				" A. Hutney & Son, mdse.	36 57
				" L. W. Corble, mdse	42 40
				" do. "	21 18
				" do. "	17 70
				" S. D. Wallace, coupon.	40 00
				" A. Tilghman, wood.	55 88
				" do. "	3 00
				" U. S. Mace, mdse.	11 55
				" R. R. Swepson, coupon.	2,000 00
				" G. D. Connor, wood	42 00
				" G. Allen & Co., mdse	14 60
				" Newt. Gas Co., gas.	12 12
				" J. A. Meadows, rations.	19 50
				" R. Bery, mdse.	1 30
				" G. B. Guion, rations.	113 08
				" C. C. Clark, legal services.	335 00
				" J. A. Gray, coupon	280 00
				" W. A. Lumley, coupon.	120 00
				" J. J. Roberson	5 00
				" lease committee, p.-roll.	320 00
				" T. C. Davis, ag't, f'g't refunded for M. City Hotel Co	844 85
				" W. S. Bell, X ties	694 96
				" do. timber.	29 25
				" do.	50
				" R. Daugherty, X ties.	4 04
				" N. S. Richardson, printing.	37 50
				" New Bernian, adv.	4 10
				" R. R. Swepson, interest.	387 00
				" J. M. Evans, "	28 54
				" J. L. Patterson, "	14 27
		$20,674 16			

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1881.			1881.		
July.	To am't bal. forward.	$20,674 16	July.	W. A. Lemly, coupons.	200 00
				O. D. S. S. Co., f'g't.	1 33
				News & Observer, adv.	16 00
				Do. "	5 00
				W. A. Lemley.	120 00
				C. M. Hawkins, interest.	127 20
				T. Booker	5 00
				M. S. Gooding, rent.	12 50
				L. J. Taylor, mdse.	40
				Cit. Nat. Bank, coupons.	800 00
				Telfair, Snede & Co., mdse.	63 36
				Tought, Rutherford & Co., mdse.	41 75
				E. Watts, P. M., stamps.	5 00
				N. & B. steamers, f'g't.	5 22
				Baughman Bros., mdse.	65 62
				Valentine & Co., "	37 75
				W. B. Wiggins, board of employés	13 50
				P. W. Adam Co., ac.	3 02
				Do. "	1 88
				Do. "	1 46
				J. D. Whitford, exp.	188 32

Statement of Receipts and Disbursements, &c.—Continued.

			1881. July.	Hancock Bros., mdse	1 00
				A. Tilghman, lumber	16 40
				J. D. Garners, killing cattle	12 00
				J. A. Meadows, rations	9 00
				Citizens' Nat. Bank, coupons	1,000 00
				Bridgeport Wood Tr. Co.	9 85
				T. C. Davis, mdse	4 00
				Do. ac	33
				C. Folleman, mdse	3 32
				W. L. Arendell, ac	5 90
				Do. "	60
				O. V. Smith Co., "	1 87
				Do. "	35
				W. & W. R. R. Co., "	1 71
				Miller & Reachy, mdse	12 30
				B. F. Nunn	10 59
				Do.	13 80
				Do.	52
				Do.	3 25
				Do.	2 40
				Oettinger Bros., ac	1 52
				City Ice Co., ice	7 03
				O. Hubbs, sh'ff, tax	71 57
				Gen'l officers' pay-roll	468 33
				Shops' "	1,235 19
				Road "	999 99
				" (transfer) "	20 00
				Goldsboro' Station	167 50
36					
1881. July.	To am't bal. forward	20,674 16	1881. July.	La Grange pay-roll	63 28
				Kinston "	98 00
				New Berne "	404 73
				Newport "	25 60
				M. City "	100 00
				Mail-train "	100 00
				F'g't " "	115 00
				Incidentals	16 95
				By balance	5,845 04
		$20,674 16			$20,674 16
37					
1881. August.	To balance	$5,845 04	1881. August.	Murphy & Co., mdse	27 50
	" cash received from U. S. mail	1,326 81		N. C. R. R. Co., bal. of judg't	852 91
	" rents	2 00		Morton, Reed & Co., mdse	66 36
	" miscellaneous	233 32		Smith & Rady, mdse	94 40
				C. F. Patterson, int. on judg't	14 27
				C. & Ga. R. R. Co., car service	2 36
				Watson & Daniel, mdse	20 00
				Do. "	1 17
				C. C. Clark, "	80 00
				G. B. Guion, "	12 25
				F. Roeper, "	17 00
				P. H. Adams & Co., ac	12 03
				D. Stinson, lumber	1,003 65
				J. T. Morehead, int. on judg't	28 54
				Wadsworth, Manning & Lougeneru, mdse	2 95
				L. G. Tillotson & Co., mdse	9 64
				Red C. Oil Co., oil	15 29
				Oriental Fish & O. Co., L. & D.	48 00
				D. Stinson, lumber	47 53
				Gen'l officers' pay-roll	250 00
				Incidentals	5 80
				By balance	$4,805 51
		$7,407 17			$7,407 17
38					
1881. Sept.	To balance	$4,805 51	1881. Sept.	Thos. Thomas, L. & D.	23 75
	" rents	5 00		Directors' pay-roll	95 00
				W. E. Hines, L. & D.	6 12
				Norf. & W. R. R. Co., car service	7 67
				J. V. Jordan, mdse	2 00
				J. F. Jones, sh'ff, taxes	531 25
				C. C. Clark, legal services	15 00
				Nashua Iron & Nail Co., mdse	214 02

Statement of Receipts and Disbursements, &c.—Continued.

			1881. Sept.	J. W. Sanders, mdse	4 00
				Cumberland, Drya & Co., mdse	3 45
				Jackson & Taylor, mdse	28 62
				G. Tillotson & Co., mdse	21 35
				J. Rumley, cl'k Legal express	3 00
				R. R. Harding, expert	100 00
				Car. So. R. R. Co., car service	28
				N. S. Richardson, printing	128 00
				Incidentals	4 75
				Gen'l officers	250 00
				By balance	3,372 25
		$1,810 51			$4,810 51
39					
1881. Oct.	To balance	$3,372 25	1881. Oct.	G. W. Best, wood	24 00
	" cash rec'd for rents	2 00		J. W. Fisherroad, car service	3 90
	" miscellaneous, viz:			P. H. Adams, ca. ac	30
	R. & D. R. R. Co. bal. 98 77			M. S. Gooding, rent	12 50
	Sale of B. B. C. 119 07	217 84		Hancock Bros., mdse	1 00
				J. V. Jordan, "	3 05
				C. E. Toy & Co., L & D	4 75
				Henry Beltner, X ties	80
				A. V. Smith & Co., ac	28 27
				S. G. Tillotson & Co., mdse	8 40
				Gen'l officers	250 00
				Incidentals	5 00
				By balance	3,250 12
		$3,592 09			$3,592 09
40					
1881. Nov.	To balance	$3,250 12	1881. Nov.	Directors' pay-roll	50 00
	" rents	9 00		J. C. Davis	2 50
	" R. & D. R. R. Co., sale of tickets	9 67		R. D. Hancock, taxes	250 00
				W. Dunn, ag't	22 90
				Do.	2 01
				West. & At. R. R. Co.	2 36
				J. W. Thoms, tr. N. & W. R. R	1 77
				W. S. Hazell, ice	13 34
				Gen'l officers	250 00
				Incidentals	1 82
				By balance	2,672 09
		$3,268 79			$3,268 79
41					
1881. Dec.	To balance	$2,672 09	1881. Dec.	J. K. Davis, sh'ff, tax	248 00
	" rent	5 00		Jones & Powell, ac	4 24
				E. E. Ellis, coal	6 00
				G. Bishop, cotton	79 35
				F. C. Robert, rent	24 00
				W. S. Bell, J. L. & D	11 24
				W. B. Duffy, "	16 08
				C. C. Clark, legal services	20 00
				Gen'l officers	250 00
				Incidentals	1 60
				By balance	$2,016 58
		$2,677 09			$2,677 09
42					
1882. Jan'y.	To balance	2,016 58	1882. Jan'y.	Directors	55 00
	" rent	20,001 50		Gen'l officers	250 00
	" sale of material	5 00		E. Watts, stamps	5 00
				F. C. Roberts (rents)	6 00
				L. J. Johnston, interest	28 54
				S. M. Evans, "	28 54
				R. D. Johnston, coupons	240 00
				J. A. Gray, cash, coupons	1,700 00
				P. A. Wiley, " "	1,200 00
				J. V. Jordan, mdse	4 40
				Imp. & Tr. Nat. B'k, coupons	800 00
				M. Hahn, sh'ff, tax	2,915 00
				P. A. Wiley, cash, coupon	260 00

Statement of Receipts and Disbursements, &c.—Continued.

			1882. Jan'y.	R. R. Swepson, int	387 00
				Nat. Bank of New Berne, Til	2 75
				J. L. Morehead, coupon	1,380 00
				M. S. Gooding, rent	12 50
				J. L. Patterson, int	14 27
				J. A. Gray, cash, coupon	220 00
				R. R. Swepson, "	2,000 00
				J. L. Morehead, int	381 67
				Incidentals	10
				By balance	10,132 26
		$22,023 08			$22,023 08
43					
1882. Feb'y.	To balance	10,132 26	1882. Feb'y.	C. F. Patterson (interest)	14 27
	" rent	25 50		S. W. Wallace, coupons	40 00
				J. D. Whitford, T. expr	116 87
				L. H. Walker, interest	57 08
				Est. of A. Wade, judg't	65 05
				M. C. Avery, interest	57 08
				Gen'l officers	250 00
				L. C. Roberts, rent	6 00
				By balance	9,551 41
		$10,157 76			$10,157 76
44					
1882. March.	To balance	$9,551 41	1882. M'ch.	R. & G. R. R. Co., bal. ac	1 65
	" rent	15 50		C. C. Clark, legal services	10 00
				Directors' pay-roll	55 00
				Gen'l officers' pay-roll	250 00
				N. S. Richardson, printing	1 50
				R. R. Swepson, ½ of judgment & int	6,546 62
				L. W. Humphrey, rent	37 50
				Taylor & Buchanan, ac	10 00
				S. E. Koonce, sh'ff, tax	38 40
				W. W. Freeman	11 00
				C. C. Clark, legal services	15 00
				J. D. Whitford, tran. ex	37 46
				E. A. Wright, taxes	8 00
				W. T. Oast, "	9 20
				J. W. Whitford, tran. exp	125 00
				Incidentals	7 80
				By balance	$2,402 78
		$9,566 91			$9,566 91
45					
1882. April.	To balance	$2,402 78	1882. April.	G. B. Guion, L. & D	8 90
	" rent	2 50		M. S. Gooding, rent	12 50
				C. M. Hawkins, int	127 00
				Gen'l officers' pay-roll	250 00
				L. C. Roberts, rent	12 00
				D. A. Grantham, sh'ff, taxes	76 88
				C. C & A. R. R. Co., car mileage	13 32
				R. Windley	9 00
				J. D. Whitford, tra. exp	20 00
				R. W. Edgerton, ac	12 25
				Incidentals	5 55
				By balance	$1,857 68
		$2,405 28			$2,405 28
46					
1882. May.	To balance	$1,857 68	1882. May.	J. T. Morehead, interest	28 54
	" rent	18 36		M. Hahn, sh'ff, taxes	37 07
				S. K. Eaton, labor	5 00
				Gen'l officers' pay-roll	250 00
				A. T. Jenkins, labor	5 00
				C. C. Clark, legal ser	25 00
				Directors' pay-roll	190 00
				J. W. Staples, legal ser	275 00
				C. R. Thomas, legal exp &	1 05
				A. G. Hubbard, " "	100 00
				C. C. Clark, tran. exp. to Wash. & Boston	200 00

Statement of Receipts and Disbursements, &c.—Continued.

			1882. May.	A. W. Gray & Sons, mdse	18 00
				C. C. Clark, legal exp	35 00
				Incidentals	10 40
				F. C. Robert, rent	6 00
				By balance	689 98
		$1,876 04			$1,876 04
47					
1882. June.	To balance	$689 98	1882. June.	Gen'l officers	250 00
	" rent	26 55			15 00
					6 00
					40 00
					215 00
					50 00
					40 00
					1 00
					18 81
				By balance	80 72
		$716 53			$716 53
1882. July.	To balance	$80 72	1882. July.	Directors	70 00
	" rent	31 50		Incidentals	8 45
				By balance	33 77
		$112 22			$112 22
48					
1882. Aug.	To balance	$33 77	1882. Aug.	Directors	$135 00
	" rent, including $20,-200.00 rec'd from M. N. C. R. R. Co	20,231 75		Incidentals	6 15
				By balance	$20,124 37
		$20,265 52			$20,265 52
1882. Sept.	To balance	20,124 37	1882. Sept.	C. C. Clark, legal exp	215 00
	" rent	27 68		J. A. Gray, coupons	100 00
				Do.	504 84
				Do. interest	28 54
				C. M. Hawkins, coupons	1,393 35
				Do. interest	130 31
				L. J. Johnston, "	28 54
				R. D. Johnston, coupons	241 36
				R. R. Swepson, "	2,020 00
				Do. interest	193 50
				Gen'l officers	250 00
				Do.	250 00
				Do.	250 00
				Newton Journal, adv	4 00
				W. L. Arendell, service	5 00
				Newt. Gas Co., gas	1 20
				N. S. Richardson, printing	125 00
				M. S. Gooding, rent	12 50
				News & Observer, adv	8 00
				Newbernian, adv	2 00
				T. Gates & Co., L. & D	12 00
				F. C. Robert, rent	18 00
				B. R. Harding, expert	100 00
				E. Morehead, coupons	1,200 00
				J. F. Jones, sh'ff, taxes	531 25
				F. Boeper, mdse	5 00
				J. L. Morehead, coupons	1,393 80
				Do. interest	385 40
				Proxy committee	55 00
				J. L. Patterson, int	14 27
				C. F. Patterson, "	14 27
				Dr. F. Duffy, med. serv	2 00
				J. J. Roberson, labor	15 00
				Directors' pay-roll	190 00
				Incidentals	6 60
				By balance	10,446 24
		$20,152 05			$20,152 05

Statement of Receipts and Disbursements, &c.—Continued.

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1882. Oct.	To balance	$10,446 24	1882. Oct.	Mrs. F. F. Fries & Louis Patterson, int. on judg't	28 54
	" rent	31 73		M. S. Gooding, rent	12 50
				Gen'l officers	250 00
				F. C. Roberts, rent	6 00
				City of New Berne, tax	250 00
				J. L. Morehead, coupons	808 00
				D. Congden, lumber	315 74
				W. F. Kornegay & Co	27 26
				West. N. C. R. R. Co	8 21
				C. C. Clark, legal serv	25 00
				Hancock Bros., judg't	50
				Incidentals	8 30
				By balance	8,737 92
		$10,477 97			10,477 97
1882. Nov.	To balance	$8,737 92	1882. Nov.	Gen'l officers	$250 00
	" Nat. Bank of New Berne, return of pocket fee	3 00		J. J. Roberson	25 00
				Baughman Bros., judg't	21 88
				C. C. Clark, legal serv	25 00
				Directors' pay-roll	190 00
				L. H. Walker, interest	57 08
				M. C. Avery, interest	57 08
				T. D. Hogg, expert	171 75
				F. C. Roberts, rent	6 00
				W. G. Lewis, expert	300 00
				J. C. Worden, serv	10 00
				Incidentals	16 48
				By balance	$7,610 65
		$8,740 92			$8,740 92

50

1882. Dec.	To balance	$7,610 65	1882. Dec.	Gen'l officers	250 00
	" rent	28 63		W. G. Lewis, exp	21 50
				N. S. Richardson, printing	32 00
				C. C. Clark, legal exp	25 00
				Directors' pay-roll	245 00
				Green & Stevenson, legal exp	25 00
				F. C. Roberts, rent	6 00
				C. C. Clark, legal exp	25 00
				Incidentals	23 55
				By balance	$6,986 23
		$7,639 28			$7,639 28
1883. Jan'y.	To balance	$6,986 23	1883. Jan'y.	Gen'l officers	250 00
	" rent	25 43		F. C. Roberts, rent	6 00
				Finance committee	15 00
				M. Hahn, sh'ff, tax	2,915 00
				M. S. Gooding, rent	12 50
				E. Ellis, coal	3 15
				M. Wood, tax	10 67
				D. A. Grantham, tax	73 88
				J. K. Davis, sh'ff, tax	248 00
				B. C. Kilpatrick, "	8 60
				Directors	95 00
				Maishon & Sutherland	12 50
				Incidentals	7 39
				By balance	$3,353 92
		$7,011 66			$7,011 66

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1883. Feb'y.	To balance	3,353 92	1883. Feb'y.	C. C. Clark, legal serv	50 00
	" rent	31 78		Do. " "	100 00
				Gen'l officers	250 00
				By balance	2,985 70
		$3,385 70			$3,385 70
1883. M'ch.	To balance	$2,985 70	1883. M'ch.	W. G. Lewis, expert	100 20
	" rent	16 05		Gen'l officer	250 00
				Directors	105 00
				W. G. Lewis, expert	50 00
				C. C. Clark, legal serv	50 00

Statement of Receipts and Disbursements, &c.—Continued.

			1883. M'ch.	L. J. Johnston, int. ac	28 79
				S. M. Evans, "	28 54
				F. C. Roberts, rent	12 00
				City of New Berne, tax	3 45
				Incidentals	3 40
				By balance	2,370 32
		$3,001 75			$3,001 75
52					
1883. April.	To balance	$2,370 32	1883. April.	M. C. Avery, interest	57 93
	" rent	22 05		L. H. Walker, "	57 93
				J. L. Morehead, "	387 02
				L. Fries, "	14 52
				R. R. Swepson, "	194 75
				Gen'l officers	250 00
				F. C. Roberts, rent	6 00
				E. Ellis, coal	6 30
				M. S. Gooding, rent	12 50
				C. M. Hawkins, interest	127 45
				J. J. Roberson, services	20 00
				C. F. Patterson, interest	14 52
				J. L. Patterson, "	14 27
				W. G. Lewis, expert	50 00
				N. S. Richardson, printing	2 00
				Directors' pay-roll	70 00
				B. F. Nause	1 00
				W. G. Lewis, expert	200 00
				S. E. Koonce, sh'ff, tax	43 85
				T. M. Patterson, int	14 27
				Incidentals	1 45
				J. J. Roberson, ser	58 50
				Green Bryan, "	12 00
				By balance	776 11
		$2,392 37			$2,392 37
53					
1883. May.	To balance	$776 11	1883. May.	C. M. Hawkins, int	2 03
	" cash received, as follows:			Gen'l officers	250 00
	Conductors	256 50		F. C. Roberts, rent	6 00
	Agents	2,446 81		C. C. Clark, legal serv	25 00
	Rent	22 86		W. Whitford	5 00
				Directors' pay-roll	75 00
				J. V. Jordan, office boy	12 00
				M. Hahn, sh'ff, tax	5 05
				Sam. Hooker, ex. labor	1 50
				Geo. Davis, X ties	20 26
				Perry Woods, tallow	10 75
				R. D. Hancock, tax	1 00
				H'y Green, wood	9 20
				E. D. Draughan, X ties	34 26
				Sam. Hooks, ex. labor	2 25
				D. Perkins, X ties	6 06
				Sam. Hooks, ex. labor	1 50
				L. Hobbs, "	2 25
				C. C. Clark, legal serv	50 00
				J. R. Roberts, cond'r	6 00
				L. Frank, ex. labor	75
				M. City, taxes	7 50
				Incidentals	19 87
				By balance	$2,949 05
		$3,502 28			$3,502 28
54					
1883. June.	To balance	$2,949 05	1883. June.	By A. Jackson, X ties	4 72
	" cash rec'd from—			N. Butler, X ties	15 15
	Conductors	429 20		B. Slade, X ties	9 62
	Agents	5,410 46		O. D. S. S. Co., com. ch'ges	58 54
	So. Exp. Co	229 06		C. C. Wetherington, wood	23 18
	Miscellaneous	48 02		gen. officers' pay-roll	250 00
				F. C. Roberts, rent	6 00
				Clyde Line, com. ch'ges	76 46
				E. Tucker	26 19
				finance committee	35 00
				C. C. Wetherington, wood	41 56

Statement of Receipts and Disbursements, &c.—Continued.

			1883. June.	By J. J. Roberson, extra labor	3 25
				G. E. Pittman, advertising	15 50
				city of New Berne, tax	2 00
				N. S. Richardson, printing	16 00
				W. H. Hendrick, shops	15 75
				F. M. Agostine, extra labor directors' p. roll	81 45
				N. Levick, X ties	110 00
				Geo. Henderson, road	5 05
				C. C. Wetherington, X ties	1 50
				F. White, X ties	11 92
				L. G. Taylor, lumber	44 35
				J. H. Woodard, conductor	19 50
				C. Haywood, extra labor	6 67
				H. Davis, wood	50
				Do. X ties	15 31
				Moses Malone, office boy	12 82
				F. White, wood & ties	7 50
				W. W. Daugherty, wood & ties	28 87
				Mallett Bros., wood	35 58
				A. Tilghman, ties, wood, & lumber	81 20
				W. J. Waters, wood	166 19
				L. Fields, "	60 00
				Jno. Fields, Jr., "	76 87
				Jno. T. Daly, "	75 00
				C. C. Wetherington, "	133 87
				T. P. Hill, "	64 75
				N. Simmons, road	87 75
				R. White, wood	1 50
				J. J. Tolson & Co., wood & ties	60 00
				Jas. Lawrence, road	286 33
				W. S. Bell, Jr., wood	12 00
				Do. X ties & lumber	37 50
				D. G. Smarr, labor	52 49
				W. E. Charlotte, shops	3 63
				D. McCain, X ties	7 00
				W. S. Bell, Jr., killing cow	8 65
				J. D. Portis, extra hands	10 00
					1 75
		$9,065 79			
55	To am't bro't forward	$9,065 79	1883. June.	C. H. Hunter, X ties	51 25
				J. J. Roberson, road	24 00
				Newt. Gas Co., gas	6 30
				W. E. Charlotte, shops	40 00
				J. A. Richardson, mdse	13 20
				Edw. Wallace, wood	22 40
				Directors' pay-roll	150 00
				Do.	80 00
				Shops	925 49
				Bridges	207 75
				Sect. No. 1	66 45
				No. 2	69 43
				No. 3	84 36
				No. 4	78 00
				No. 5	72 07
				No. 6	76 57
				No. 7	64 95
				No. 8	96 00
				Goldsboro' Sta	110 90
				La Grange	40 80
				Kinston	81 00
				New Berne	105 00
				Do.	30 00
				Newport	18 00
				M. City	77 10
				Mail train	120 00
				Fr't "	80 66
				Gen'l officers	139 00
				Incidentals	26 30
				John Gatling, receiver, for shops, material, wood, & ties	1,517 43
				By balance	$2,384 86
		$9,065 79			$9,065 79

Statement of Receipts and Disbursements, &c.—Continued.

56

1883.			1883.		
July.	To balance	$2,384 86	July.	R. J. Mason, shops	12 30
"	cash rec'd from—			D. G. Smarr, labor	6 49
	Agents	5,856 98		J. L. Morehead, coupons	1,580 00
	Conductors	700 75		Do. interest	381 67
	So. Exp. Co.	312 37		Sam. Hooks, ex. labor	75
	Miscellaneous	398 68		J. D. Portis, "	29 30
	Rent	29,093 15		G. E. Pittman, advertising	2 25
				J. A. Gray, coupons	300 00
				S. M. Evans, interest	28 54
				O. D. S. S. Co., com. ch'ges	206 40
				J. P. Bryan, wood	6 40
				M. Malone, office boy	16 50
				S. E. Tillotson, mdse	85
				Do. mdse	6 50
				Do. mdse	112 18
				B'k of New Hanover, coupons	5,835 85
				Do. "	2,234 50
				Do. int. on loan	61 58
				W. B. Griffin, wood	40 00
				D. S. Stinson, lumber	49 68
				C. C. Clark, legal serv	100 00
				S. H. Gray, ag't, com. ch'ges	348 65
				J. A. Bryan, salary	25 00
				Hook, Swetting & Co., mdse	11 42
				Do. "	28 85
				Morton, Reed & Co., "	22 60
				Baughman Bros., "	6 00
				Do. "	2 25
				Do. "	12 50
				G. A. Smith, "	44 67
				Do. "	14 40
				Do. "	7 17
				O. D. S. S. Co., fr't	10 27
				N. S. Richardson, printing	39 00
				D. Congdon, lumber	5 30
				Do. "	4 64
				R. D. Johnston, coupons	240 00
				L. J. Johnston, interest	28 54
				I. B. Abbott, com. on exc	109 02
				Directors' pay roll	155 00
				Do. transfer	40 00
				H. L. Hall, mdse	1 05
				S. H. Gray, ag't, fr't	39 57
				Balt. Car Wheel Co., mdse	147 00
				Do. "	288 00
				W. S. Mears & Co., "	15 98
				Hosford Sons, "	30 00
				Courtney & Armistal	91 67
				C. H. Hunter, X ties	20 00
				Tom. Williams, road	75
				Sam. Hooks, "	75
		$38,746 79			

57

1883.			1883.		
	To am't br't forward	$38,746 79	July.	Bank New Hanover, coupons	800 00
				E. R. Page, conductor	18 00
				A. Pettipher, brakeman	6 00
				B. Duncan, "	6 00
				P. Ward, road	75
				M. S. Gooding, rent	12 50
				T. Duncan, operator	3 00
				D. G. Swan, labor	9 05
				S. Haskett, wood	10 40
				H. Riggs, "	19 20
				C. C. Wetherington, wood	68 25
				Jno. Jones, road	1 50
				H'y Taylor, "	7 00
				F. M. Agostine	136 25
				C. C. Wetherington, com	1 96
				N. Ellington, coupons	1,680 00
				J. G. Brown, coupons	200 00
				W. C. Murdock, ag't, com	1 10
				I. Hargett, road	3 00
				F. C. Roberts, rent	6 00
				A. Jones, road	13 75
				H'y Bryan, road	14 75
				City of New Berne, tax	2 00
				W. F. Allen, shops	9 16
				W. Salter & Co., shingles	4 00
				J. B. Moore, insurance	625 00
				L. G. Tillotson & Co., mdse	84 75

Statement of Receipts and Disbursements, &c.—Continued.

			1883.		
			July.	L. G. Tillotson & Co., mdse....	6 00
				Do. " ...	17 85
				J. R. Roberts, shops	30 00
				G. E. Pittman, advertising....	15 06
				R. H. Bates, shops.....	12 50
				J. H. Woodard, condu.....	36 67
				Robert Campbell, road	75
				O. D. S. S. Co., com. ch'ges....	60 07
				New Berne wharf, labor.....	23 63
				R. R. Swepson, interest..... ..	193 50
				Jno. Calvin, road	16 95
				Sam. Willis, "	14 75
				J. L. Patterson, interest.....	14 27
				C. F. Patterson, "	14 27
				Louis Patterson, "	14 27
				G. Allen & Co., mdse.....	31 94
				Do. "	20 50
				Newb. Gas Co., gas.....	6 75
				R. R. Swepson, coupons.....	2,000 00
				D. Piggott, road	13 75
				E. J. Bell, "	24 75
				J. W. Phillips, road.....	12 25
				Wm. Brown, "	3 75
		$38,746 79			
58			1883.		
	To am't bro't forward.....	$38,746 79	July.	E. B. Heath, wood.....	7 20
				Cit. Nat. Bank, coupons.....	1,000 00
				A. L. Heath, com's.....	1 83
				W. S. Bell, Jr., wood, ties, &c.	160 77
				Newb. wharf, labor.....	25 43
				J. K. Davis, sh'ff, legal exp...	13 30
				W. G. Creamer & Co., mdse...	625 88
				C. M. Hawkins, int.....	127 20
				G. H. Marshall, shops.....	27 78
				J. J. Tolson, X ties	85 15
				D. Stinson, labor.....	38 20
				Directors' pay-roll.....	230 00
				L. H. Walker, interest.....	57 08
				M. C. Avery, "	57 08
				Newb. wharf, labor.....	49 01
				Letitia Fries, int.....	14 27
				W. N. Pugh, sol. ag't.....	25 00
				C. C. Clark, legal serv.....	500 00
				G. E. Pittman, advertising...	4 00
				S. Haskett, wood.....	33 75
				A. L. Heath, "	40 00
				Wm. Dunn, ext. labor.....	71 20
				Gen'l officers' pay roll.....	490 00
				Bridges, &c., "	322 87
				Shops' "	1,456 06
				Road sect. No. 1.....	112 75
				No. 2.....	112 00
				No. 3.....	110 15
				No. 4.....	101 12
				No. 5.....	128 50
				No. 6.....	131 25
				No. 7.....	122 49
				No. 8.....	131 50
				Goldsboro' Station.....	198 35
				La Grange "	68 00
				Kinston "	132 75
				New Berne.....	175 00
				" T. disp.....	50 00
				Newport Station.....	30 00
				M. City "	127 10
				Mail train.....	200 00
				F'g't "	121 69
				Proxy committee.....	55 00
				Lease committee.....	140 00
				Proxy committee.....	50 00
				Incidentals.....	33 81
				By balance.....	$11,822 97
		$38,746 79			$38,746 79
59					
1883. August.	To balance.....	$11,822 97	1883.		
	" cash received from—		Aug.	A. Colly, X ties.....	7 87
	Agents.....	7,939 26		E. B. Robert, ag't, com. ch'ges.....	61 16
	Conductors	822 15		E. B. Robert, ag't, f'g't.....	19 19
	So. Ex. Co.....	218 39		Clyde Line, com. ch'ges.....	363 47
	Miscellaneous	2,449 73			

Statement of Receipts and Disbursements, &c.—Continued.

			1883.		
			Aug.	F. B. Lofton, lease com	35 00
				W. S. Bell, Jr., X ties, &c	20 65
				F. M. Agostine, ex. labor	21 10
				D. Fry, ac	10 00
				C. C. Wetherington, wood	183 31
				C. C. Clark, Jr., & Co., "	60 31
				J. D. Portis, extra labor	24 90
				W. Dunn, ag't, sea f't	175 00
				Newb. wharf, labor	58 13
				Do. "	15 00
				G. A. Smith, mdse	27 25
				Do. "	22 03
				Do. "	86 30
				Do. "	34 05
				Do. "	32 94
				Tom Williams, extra labor	75
				Geo. Crawford, " "	75
				J. A. Richardson, mdse	17 20
				G. Spock, X ties	29 94
				C. B. Roup, mdse	15 67
				G. E. Pittman, adv	3 75
				Clyde Line, com. ch'ges	212 65
				G. E. Pittman, adv	11 00
				Newb. wharf, labor	109 90
				D. G. Swan, labor	8 90
				Do. "	16 25
				D. Stinson, lumber	25 60
				M. Kennedy, office boy	13 55
				Garry Iron Roof Co., iron roof	636 89
				City of New Berne, tax	2 00
				J. H. Woodard, conductor	30 00
				N. S. Richardson, printing	87 75
				H. Murdock, road	80 00
				J. J. Roberson, "	25 00
				J. D. Whitford, trans. exp	433 23
				C. C. Wetherington, piling	88 80
				Edw. Laughington, X ties	12 25
				C. C. Wetherington, X ties	57 12
				H. Davis, wood	45 20
				Do. X ties	13 75
				G. Allen & Co., mdse	35 58
				Newb. Gas Co., gas	7 20
				Newb. wharf, labor	108 88
				Road, extra labor	33 72
				W. S. Bell, Jr., X ties	95 25
		$23,252 41			
60					
			1883.		
	To am't bro't for'd	$23,252 41	Aug.	Mallett Bros., wood	28 43
				G. H. Marshall, shops	24 41
				C. R. King, shops	13 40
				D. McCain, X ties	2 02
				Thos. Duncan, tel. op	5 00
				C. H. Hunter, X ties	14 87
				F. White, X ties	38 75
				J. L. Bell, X ties	14 75
				F. L. Perry, ac	9 00
				F. M. Agostine	10 00
				A. Miller, X ties	20 12
				C. C. Clark, legal serv	200 00
				W. N. Pug, sol. ag't	20 00
				Sam. Dixon	5 12
				C. H. Hunter, com.	6 85
				L. F. Ulrich, shops	20 00
				J. B. Mann & Son, X ties	17 75
				Sol. Adams, killing cow	10 00
				C. H. Hunter, wood	58 40
				W. H. Brown, Newb. wharf	6 24
				W. U. Laurence, mdse	1 25
				A. Murdock, road	37 00
				D. Perkins, X ties	4 05
				J. W. Lewis, road	19 50
				E. Ellis, coal	9 75
				A. W. Edwards, labor on boiler	50 00
				C. B. Keogh & Co., mdse	20 00
				Newb. wharf, labor	115 10
				N. Simmons, road	2 60
				W. H. Marshall, wood	4 80
				B. F. Green, labor at K	43 50
				L. G. Tillotson & Co., mdse	8 47
				Do. "	1 00
				Do. "	18 50

Statement of Receipts and Disbursements, &c.—Continued.

			1883.		
			Aug.	L. G. Tillotson & Co., mdse....	37 24
				Do. " ...	1 25
				Do. " ...	2 00
				Baughman Bros., " ...	8 50
				Do. " ...	52 88
				Do. " ...	3 60
				Do. " ...	11 25
				R. White, wood.....	40 00
				G. Richardson, labor	5 10
				F. C. Roberts, rent.....	6 00
				J. D. Porter, extra.....	21 25
				Thirth & Hull, lumber.....	163 50
				Rob't Campbell, road.....	4 50
				F. M. Agoste, bal. ac.....	11 06
		$23,252 41			
61					
	To am't bro't forward.....	$23,252 41	1883.		
			Aug.	G. W. Collier.....	38 33
				W. Dunn, ag't, sea f't.....	145 00
				R. Howland, ac	24 23
				M. S. Kennedy, office boy.....	6 50
				A. Atkinson, mdse.....	2 50
				S. Haskett, wood.....	67 20
				Gen. officers' p.-roll.....	340 00
				Shops' p.-roll.....	1,434 19
				Bridges, &c., p. roll.....	225 38
				Road sect. No. 1...	106 00
				No. 2.....	126 25
				No. 3.....	120 43
				No. 4.....	136 37
				No. 5...	149 50
				No. 6.....	130 50
				No. 7.....	141 99
				No. 8.....	151 00
				Gold's station.....	181 80
				La Grange station.....	68 00
				Kinston "	132 00
				New Berne "	282 50
				Newport "	35 00
				M. City "	111 70
				Mail train	100 00
				F'g't "	124 99
				Incidentals.....	15 71
				By balance.....	$14,104 39
		$23,252 41			$23,252 41
62					
1883.			1883.		
Sept.	To balance	14,104 39	Sept.	Jno. Fields, wood.....	20 25
	" cash rec'd from—			Do. "	15 87
	Agents.....	7,263 22		C. E. Cross, "	8 80
	Conductors.....	569 25		Do. "	11 20
	So. Exp. Co.....	248 57		W. K. Whitfield, "	103 20
	Miscellaneous	1,539 95		Pamlico Enterprise, adv.....	1 25
	P. O. Dep't..... ..	739 12		A. W. Edward, work on boiler	50 00
				Watson & Daniels, ice.....	10 00
				W. Dunn, ag't, ex. labor.....	30 00
				Newb wharf, labor.....	78 54
				Royall & Morriss,com on exc.	40 34
				Humphrey & Howard, wood..	21 25
				T. D. Heartt, X ties.....	2 70
				Do. "	2 02
				Do. "	37
				J. R. Roberts, conductor.....	8 00
				C. C. Wetherington, wood.....	193 81
				W. Dunn, ag't, sea f't.....	117 42
				Do. ex. labor.....	183 48
				Do. f'g't on iron....	36 50
				Do. exp. on ac. Co.	17 75
				Do. " "	3 00
				Do. sea f'g't.....	90 00
				R. A. Dillon, commissions....	3 44
				A. Mitchell, wood.....	84 80
				Clyde Line (com. ch'ges).....	952 68
				S. H. Gray, ag't, f'g't.....	70
				O. D. S. S. Co., "	8 02
				O. E. Maltby, pile-driver.....	45 00
				B. F. Nunn, Kin. platform....	110 25
				Jno. Bryan, wood.....	11 20

Statement of Receipts and Disbursements, &c.—Continued.

			1883.		
			Sept.	Abbott Iron Co., mdse	215 39
				Do. "	34 85
				F. W. Dave & Co., "	5 25
				Do. "	62 90
				G. A. Smith, "	44 48
				Do. "	20 25
				Do. "	29 93
				Do. "	21 86
				Do. "	58 79
				Whitman Bros. M'f'g Co., mdse	10 45
				G. R. Mannly & Co, mdse	78 91
				Balt. Car Wheel Co., "	132 00
				Do. "	135 00
				Thompson, Ashburn & Co., mdse	21 23
				Westburg Air Br. Co., mdse	7 65
				Do. "	17 57
				J. F. Parrott, lumber	267 58
				O. D. S. S. Co., com ch'ges	167 35
		$24,464 50			
63			1883.		
	To am't bro't forward	$24,464 50	Sept.	W. Weil & Bro., coal	44 00
				D. G. Swan, labor & meat	14 10
				E. Ellis, coal	30 00
				A. W. Edwards, work on boiler	50 00
				J. A. Bonitz, adv	2 50
				Do. "	2 50
				Do. "	3 50
				News & Observer "	3 50
				Newb. wharf, labor	59 99
				J. T. Daley, wood	35 00
				G. G Hancock, platform	38 50
				L. Manning, wood	6 40
				C. Bryant, "	4 80
				Jas. West, "	4 80
				L. Smith, "	9 60
				Amos Batts, "	11 20
				Amos Bryan, "	18 40
				Jud. Stafford, "	5 20
				D. Perkins, X ties	18 87
				A. Jackson, X ties	2 87
				City of New Berne, tax	2 00
				S. White, X ties	4 75
				Construction train	4 68
				E. D. Daughenham, X ties	10 12
				R. & D. R. R. Co, car service	4 95
				C. C. Wetherington, X ties	100 50
				F. White, X ties	117 50
				Joe Perkins, X ties	3 25
				S. Haskett, wood	29 06
				Do. X ties	285 75
				G. L. Hardin, wood	93 60
				S. P. Harris, X ties	22 75
				V. B. Moore, cars	2,000 00
				A. Miller, X ties	46 62
				Sam. Perkins, X ties	9 75
				C. Merritt, X ties	13 37
				M. Hill, X ties	12 62
				D. Stinson, lumber	1,173 84
				J. Q. A. Flyhes, X ties	8 75
				A. T. French, X ties	36 87
				J. W. Webb, extra labor	6 00
				W. F. Komegay & Co., coal	8 00
				Elias King, ex. labor	20 25
				Ben. Garner, "	16 50
				J. S. Corbett, X ties	8 50
				Jasp. Jackson, X ties	15 62
				E. L. R. Davis, X ties	99 00
				A. W. Edwards, work on boiler	50 00
		$24,464 50			
64			1883.		
	To am't bro't forward	$24,464 50	Sept.	J. H. Woodard, conductor	28 33
				H. Mackey, office boy	8 50
				G. E. Pittman, adv	15 00
				L. H. Cutter, mdse	11 90
				Newb. wharf, labor	71 50
				J. W. Williams, X ties	34 12
				B. A. Koonce, X ties	6 62

Statement of Receipts and Disbursements, &c.—Continued.

			1883.			
			Sept.	B. Slade, X ties		7 12
				R. White, X ties		71 20
				Do. X ties		41 60
				Do. wood		3 75
				D. McCain, X ties		11 25
				W. S. Bill, Jr., X ties		333 87
				C. H. Hunter, X ties		126 00
				J. W. Berry, wood		12 00
				M. McCluse, X ties		40 37
				G. Allen & Co., mdse		41 89
				Newb. Gas Co., gas		4 05
				A. J. Donaldson, X ties		32 37
				C. Becton, X ties		12 37
				W. S. Mace, mdse		3 87
				A. Dunn, X ties		8 12
				S. H. Gray, ac		8 92
				Wm. Dunn, ac		2 18
				A. W. Edwards, work on boiler		50 00
				S. H. Gray, ag't, ac.		7 50
				Do. ac		27 40
				C. E. Foy & Co., X ties		17 62
				D. M. Quinn, shops		45 00
				Newb. wharf, labor		49 50
				N. Simmons, ex. labor		2 60
				G. A. Richardson, X ties		43 00
				McD. Taylor, La G. platform		38 25
				G. G. Hancock, " "		45 88
				J. S. Wooten, mdse		5 25
				K. E. Bizzle & Bro., mdse		1 12
				J. J. Roberson, road		54 00
				Do. board, &c.		6 25
				L. J. Cox, labor in shops		5 00
				K. Phillips, wood		6 40
				Squire George, X ties		10 62
				Jno. Peterson, X ties		12 25
				W. Dunn, sea f'g't		100 00
				I. B. Abbott, com's on exc		23 96
				W. N. Pugh, sol. ag't		75 00
				O. V. Smith, ac		1 17
				Do. ac		12 25
				J. B. Mann & Son, X ties		29 25
		$24,464 50				
65			1883.			
	To am't bro't forward	$24,464 50	Sept.	F. C. Roberts, rent		6 00
				W. Dunn, ag't, sea f'g't		70 00
				Newb. Gas Co., gas		3 00
				D. G. Swann, labor		78 99
				A. W. Edwards, work on boiler		50 00
				N. H. Hendrick, bridge		35 00
				Newb. wharf, labor		26 75
				Incidentals		13 66
				Construction train p.-roll		19 87
				Gen'l officers' "		340 00
				Shops' "		1,541 44
				Bridges, &c., "		246 26
				Road sect. No. 1		90 24
				2		154 75
				3		172 50
				4		193 94
				5		174 25
				6		130 50
				7		143 50
				8		137 12
				Goldsboro' station		146 86
				La Grange "		68 00
				Kinston "		135 40
				New Berne "		203 30
				Newport "		35 00
				M. City "		106 85
				Mail train		150 00
				Freight train		105 11
				By balance Oct. 1, '83		$10,116 43
		$24,464 50				$24,464 50

66 And afterwards, to wit, on the 8th day of November, 1883, the answer of John D. Whitford, Chas. C. Clark, H. F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, and C. S. Wooten, directors of the said defendant company, on the part of the State of North Carolina, to the said bill of complaint of William E. Christian is filed by Thos. Ruffin and Battle & Mordecai, their solicitors, in the words following, to wit:

Answer of John D. Whitford and Others, Directors of Defendant Company on the Part of the State of N. C.

United States Circuit Court, Fourth Circuit, Eastern District of North Carolina.

WILLIAM E. CHRISTIAN, Plaintiff, *against* THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing Stock Owned by the State, and Jno. D. Whitford, President; Chas. C. Clark, Henry F. Grainger, Council S. Wooten, Paul F. Faison, J. F. Parrott, Wm. T. Caho, James C. Davis, Eugene Morehead, James A. Bryan, John Gatling, and John C. Wooten, Directors of said Company, and John M. Worth, Treasurer of the State of North Carolina.	In Equity.

The answer of John D. Whitford, Chas. C. Clark, H. F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, and C. S. Wooten, directors of the said defendant company on the part of the State of North Carolina.

These defendants, reserving to themselves all manner of exception to the plaintiff's bill of complaint, for answer thereto say:

I. That the allegations and statements in the answer of F. M. Simmons, the proxy representing the stock of the State in the defendant company, and John M. Worth, treasurer &c., are in the main true, and they adopt the same, with the modifications to paragraph marked fifth, below expressed, as their answer.

67 II. They believe that the majority of the stock, as represented and counted in the meeting of the stockholders of the defendant company, would have been voted in favor of the proposed lease to the Eastern North Carolina Railroad Company in preference to all others that were proposed, but they believe at no time could an injudicious lease or one unjust to any stockholder, the creditors of the defendant corporation, the plaintiff, or any other person concerned have been secured by the said Eastern North Carolina Railroad Company, or one that could not fairly be considered as advantageous to all concerned, or unless it should be provided that the proposed lease should be submitted to the directors for sanction, because the defendant Simmons, as State proxy, threatened to withdraw from and break up said meeting if such a course

should be insisted upon by the majority as counted, and these defendants doubt not that he would have done so, and therefore the resolution for adjournment and appointment of a committee of disinterested stockholders to receive and formulate propositions, &c., was generally concurred in and adopted. These defendants do not believe, as might be inferred from said paragraph fifth of said answer, that a lease of the defendant company's road and other property is a necessity to its continued existence, but they fully believe that terms of lease may be offered by some corporation or other parties so beneficial to all persons concerned, with proper security for compliance with such terms, that the defendant company should accept them rather than continue to operate its road itself; and these defendants, for this reason and for the others set forth in said answer, which they adopt as aforesaid, submit that your honors will not restrain them or the said defendant company from the exercise of the rights to lease or of their discretion in the premises.

And these defendants pray to be hence dismissed, &c.

THOMAS RUFFIN,
BATTLE & MORDECAI,
Solicitors for Defendants.

68 CIRCUIT COURT OF THE UNITED STATES,
Eastern District of North Carolina:

P. F. Faison, being sworn, says that the facts set forth in this answer as of his own knowledge are true, and those stated upon information he believes to be true.

P. F. FAISON.

Sworn to and subscribed before me this November 8th, 1883.
N. J. RIDDICK, *Clerk.*

And thereafter, to wit, at a term of the circuit court of the United States begun and held for the eastern district of North Carolina, at the court-rooms of said court, in the city of Raleigh, in said district, on the last Monday of November, 1883, and on the first day of said term, to wit, Monday, November the 26th, A. D. 1883, the Honorable Hugh L. Bond and the Honorable Augustus S. Seymour, judges, presiding, the answer of the defendant, The Atlantic and North Carolina Railroad Company, to the said bill of complaint of William E. Christian is filed by Chas. C. Clark, Gatling & Whitaker, and Fuller & Snow, solicitors for the defendant corporation, The Atlantic and North Carolina Railroad Company; which said answer is in the words and figures as follows, to wit:

69 Circuit Court of the United States in and for the Eastern District of North Carolina.

WILLIAM E. CHRISTIAN *against* THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing the Stock Owned by the State of N. C. in said Company; Jno. D. Whitford, Charles C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wooten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wooten, President and Directors of said Company, and John M. Worth, Treasurer of said State, Defendants.	In Equity.

The Answer of The Atlantic & North Carolina Railroad Company.

The defendant, The Atlantic & North Carolina Railroad Company, reserving, &c., for answer to the bill of complaint filed in the above-entitled cause, says it is true, as alleged in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, that the plaintiff, Wm. E. Christian, is a a resident and citizen of the State of Virginia, and that the defendants are citizens and residents of the eastern district of North Carolina; that the Atlantic & North Carolina Railroad Company was duly chartered by the General Assembly of North Carolina; that in pursuance of said charter said company was duly organized, and its present officers are John D. Whitford, president, and John D. Whitford, C. C. Clark, W. T. Caho, J. C. Davis, H. F. Grainger, P.
70 F. Faison, J. F. Parrott, and C. S. Wooten are directors on the part of the State, and Eugene Morehead, John Gatling, Jas. A. Bryan, and John C. Wooten are directors chosen by the private stockholders of said company; that the said State is the owner of twelve thousand six hundred and sixty-six shares of the capital stock of said company, and is duly authorized to appoint a proxy to represent the said shares in all the meetings of the stockholders of said company, and that the defendant, F. M. Simmons, is now such proxy, duly appointed; that this defendant has its office and principal place of business in the said eastern district; that the capital stock of said company was originally fixed at $900,000, divided into shares of $100 each, but has since been increased to $1,600,000; that the said State of North Carolina did subscribe for two-thirds of said stock, and private individuals subscribed and paid for the remaining one-third; that it was provided by law that the said State of North Carolina might, in case the same be necessary, borrow money sufficient to pay its said subscription, and accordingly the money therefor was borrowed, and the bonds of the State securing the same were issued and sold, as is set forth in the said bill of complaint; that it was further provided by law that as security for the redemption of said bonds "the public faith of the State of North Carolina is hereby pledged to the holders thereof (that is to say, the said bonds), and in addition thereto all the stock held by the State in the Atlantic & North Carolina Railroad Company, hereby created,

shall be pledged for that purpose, and any dividend of profit which may from time to time be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said coupon bonds, but until such dividends of profit may be declared it shall be the duty of the treasurer, and he is hereby authorized and directed, to pay all such interest, as the same may accrue, out of any money in the treasury not otherwise appropriated;" that the copy of the bonds set forth in paragraph eleven of said bill of complaint is correct, but for greater certainty this defendant prays that the bond itself shall be produced in court and submitted to inspection; that the complainant is a *bona fide* holder for value of these said bonds, the numbers of which
71 are set forth in paragraph twelve of said bill of complaint, and this defendant prays that the said last-mentioned bonds may be produced in court and submitted to inspection.

II. For further answer this defendant says that it has no precise knowledge of number of said bonds now outstanding or of the interest due thereon, but it believes that the statement contained in paragraph thirteen of said bill of complaint is substantially correct. It admits that the State of North Carolina has not paid the interest on said bonds promptly, but it is not informed of the date at which default in such payment was first made, nor does it now know the amount of interest due by the State on those of said bonds held by the complainant. In this behalf this defendant insists, being so advised, that it has no concern whatsoever with the debt of the State or with the said bonds now held by the complainant, but it is informed and believes, and so charges, that the State of North Carolina has, through its General Assembly, passed certain acts providing for the settlement and adjustment of the said bonds, of which said acts of settlement and adjustment the complainant can, if he will, now avail himself.

III. This defendant, further answering, says it is advised, and so insists, that the said bonds are not a lien upon the shares of stock owned by the State as aforesaid, such as can be enforced in a court of equity; but, even if such a lien be declared to exist, it is a matter between the State and the holders of said bonds and in nowise affects this defendant. Whether or no the said bonds have any such lien upon dividends of profit it refers to the judgment of this honorable court.

IV. That it is true, as is alleged in paragraph fifteen of said bill of complaint, that the officers and managers of this defendant did make to the general annual meeting of stockholders in June, 1881, a report showing an excess of earnings over the actual necessary expenses of merely operating its road, but this excess was expended of necessity in payment of the interest of its debt and in making such repairs upon its road and property as were absolutely essential to its preservation; and this defendant further says that it has not at any time in the past been able, nor is it now able, nor has
72 it any reasonable hope in the near future of being able, to earn money sufficient, after defraying running expenses and making necessary repairs to its property and additions to its roll-

ing stock and making provisions for the payment of its debt, to declare any dividend to its stockholders.

V. That it admits to be true, as is alleged in paragraph sixteen of said bill of complaint, that it did, on the 1st day of July, 1881, with almost the unanimous consent of its stockholders in general meeting assembled, lease to the Midland North Carolina Railway Company all its property and franchises for thirty years, at an annual rent of $40,000, and that it was provided in the said contract of lease that no dividend upon its stock should be declared from the said lease money until all this defendant's mortgage debt should be paid. This provision was insisted on by the said lessee and assented to by this defendant, because at the instance of various persons who were the owners of certain first-mortgage bonds issued and of certain debts due to a very large amount, to wit, about $200,000, by this defendant this honorable court has passed and enrolled its decree adjudging and declaring that in case this defendant should at any time make default in paying the interest on the said debts and such default should continue for sixty days, and if this defendant should make default in paying the interest semi-annually *according* upon the said first-mortgage bonds, and such default should continue for a period of nine months, then this defendant's road, property, and franchises should at once be sold and the proceeds applied to the payment of said mortgage bonds, debts, and interest; and this defendant further says that the money rental set forth in said paragraph sixteen was not the only consideration which induced this defendant to lease its said road and property aforesaid, but that it was expressly stipulated and agreed by the said Midland North Carolina Railway Company that it should build a new railroad between Goldsboro', this defendant's western terminus, and the town of Salisbury, in North Carolina; that it should buy or obtain possession of the Western North Carolina railroad, which runs from said town of Salisbury to the Tennessee line, and consolidate and operate this defendant's road, the
73 new road from Goldsboro' to Salisbury, and the Western North Carolina railroad as one line. This defendant believed then and believes now that if this contract had been carried out it would have resulted in very great profit to the stockholders of this defendant. It is true that the said contract and agreement was forfeited and rescinded, and that this defendant has repossessed itself of its said road and property and is now operating and using the same. For greater particularity of detail it refers to the said contract of lease, which is filed herewith, marked A, and prayed to be taken as a part of this answer.

VI. That the allegations of the seventeenth paragraph of said bill, as defendant is informed and believes, are substantially true; but this defendant, further answering, saith it does not believe that an injudicious or improvident lease or one hurtful to the interest of this defendant or its stockholders could have then or could now be made to said Eastern North Carolina Railroad Company or any other corporation or person, for that, first, the State, through its proxy, as it has the power to do, would have prevented; and,

second, such contract of lease could not then and cannot now receive the concurrence of the board of directors, made necessary by the action of the General Assembly.

VII. This defendant believes that sections 17 and 18 of its charter are correctly set forth in paragraphs eighteen and nineteen of said bill of complaint, but for greater certainty refers to the charter itself; this defendant is advised that the construction of the said sections of its charter set forth in paragraph twenty of the said bill of complaint is erroneous in law, and that under and by virtue of its said charter and the various acts of the General Assembly amendatory thereto, and by reason of the action of the stockholders of this defendant heretofore had thereunder, this defendant has now in law the right to lease its said property if its said stockholders and officers should so elect

VIII. For answer to paragraph twenty-one of the said bill of complaint, this defendant says it has no knowledge as to what information the complainant has received as to the offers made to lease its said road and property, but certain it is that no lease
74 will be made unless the proposition submitted shall, in the opinion of its said stockholders and officers, be to the advantage of this defendant.

IX. For answer to the allegations contained in paragraph twenty-two of said bill of complaint, this defendant says that whether or no the holders of said bonds have a lien upon the stock of this defendant owned by the State of North Carolina for the payment of the principal and interest of the said bonds, and whether or no the said holders are in equity the real owners of the said stock of the State, and what their rights are in the premises is a matter of law for the consideration of the court, concerning only the said owners and the State and in nowise affecting this defendant or calling upon it for answer. The opinion of counsel learned in the law given to this defendant upon this matter has hereinbefore been set forth. But even if it be true, as is insisted on by the complainant, that the said holders have in law a lien upon the said stock of the State as aforesaid, this defendant is further advised and so insists that such lien cannot be enforced until the time for the payment of the principal of said bonds shall arrive, and that the complainant ought not to have and maintain his suit therefor until that time.

X. To the first interrogatory propounded complainant this defendant answers: Yes.

To the second interrogatory: Yes.

To the third interrogatory: Yes.

To the fourth interrogatory: That this interrogatory involves matter of law, which it is unwilling and not compelled to answer under oath. The advice it has received from its counsel touching the same is hereinbefore set forth, and the words of the statute concerning which the interrogatory is propounded are especially referred to.

To the fifth interrogatory: Yes.

To the sixth interrogatory: That this defendant has caused to be issued to the State of North Carolina twelve thousand six hun-

dred and sixty-six shares of its capital stock, of the face value of one hundred dollars each, which certificates, as this defendant is informed and believes and so avers, are now in the public treasury and over which this defendant has no control or concern.

75 To the seventh interrogatory: To the best of its information and belief, yes.

To the eighth interrogatory: This defendant cannot say, unless the ten certificates referred to in this interrogatory be submitted to its inspection, whether they were issued as stated in said interrogatory or not. The fact that the act of the General Assembly authorizing the issue of said bonds provides that they shall not be issued in sums of less than $1,000, and the fact that all the bonds now sued on by the complainant appear to be for the sum of $500, each are inconsistent.

To the ninth interrogatory: This defendant says that it believes there are now outstanding a large number of said bonds, the interest on which has not been paid for some time, but how many of said bonds are so outstanding and what amount of interest is now due and unpaid on the same it cannot say. It has already answered this interrogatory as fully as it is able to do.

To the tenth interrogatory: It has no information other than that furnished in the said bill of complaint whether the complainant now holds the bonds upon which he has brought this suit or not. If he does, it answers to this interrogatory yes.

To the eleventh interrogatory: It answers that this interrogatory involves matter of law, and it has already answered the same.

To the twelfth interrogatory: It has already stated that the earnings of its road for one or more years have been more than sufficient for the actual running expenses, but that the excess has been necessarily applied to the payment of the interest on its debt and upon the repair and preservation of its property. For further answer to this interrogatory it says that it is absolutely necessary now and will be for several years to apply all of the excess of its earnings to the betterment of its road-bed and track and to the repair and increase of its rolling stock and motive power, and that in this expenditure the utmost economy must be observed in order to enable it to meet and discharge its duties as a common carrier.

To the thirteenth interrogatory: It has already hereinbefore fully answered this interrogatory.

76 To the fourteenth interrogatory: To its best information and belief, yes.

For a further defence this defendant says that what sworn rights the complainant, as the owner of any of said bonds, may have as to the stock of this defendant, owned by the State of North Carolina he has no right in law, before these rights are declared by a court of competent jurisdiction and enforced by its decree, to call this defendant into court or in anywise interfere in the transaction of its business; and this defendant is advised and so insists that until he shall have obtained possession of the said certificates of stock owned by the State as aforesaid and now in the public treasury as aforesaid he

is in no sense a stockholder of this defendant, has no voice in the management of its business, and has no rights in respect thereto.

Wherefore this defendant prays to be hence dismissed with his reasonable costs in this behalf most unjustly expended.

[Seal of the Atlantic & North Carolina Railroad.]

CHAS. C. CLARK,
GATLING & WHITAKER,
FULLER & SNOW,
Solicitors for Defendants.

John D. Whitford, being duly sworn, says that he is the president of the defendant corporation in whose behalf the foregoing answer is filed, and has affixed its corporate seal thereto; that he has read said answer, and the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those he believes — to be true.

JOHN D. WHITFORD.

Sworn to and subscribed before me this 24th day of November, A. D. 1883.

CLEMENT MANLY,
U. S. Commissioner.

Filed November 26th, 1883.

N. J. RIDDICK, *Clerk*,
By VITRUVIUS ROYSTER,
Deputy Clerk.

77 And afterwards, at the said November term, A. D. 1883, of the circuit court of the United States for the eastern district of North Carolina, to wit, on the 11th day of December, 1883, before his honor Aug. S. Seymour, judge, motion is made to make John Stewart a party complainant. Motion allowed, and thereupon an order is made in the words as follows, to wit:

Order Making John Stewart a Party Complainant.

United States Circuit Court, Fourth Circuit, Eastern District of North Carolina.

WILLIAM E. CHRISTIAN, Plaintiff,
against
THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY and Others, Defendants.

The petition of John Stewart, asking to be made a party complainant in the above-named action, being filed and it being alleged therein that the said petitioner is the holder and owner of bonds of the State of North Carolina, mentioned in plaintiff's bill, amounting to ten thousand dollars, to which are attached coupons, overdue and unpaid, amounting to nine thousand dollars—

It is now, on motion of counsel, ordered and adjudged by the court that the said petitioner, John Stewart, be made in all respects a party complainant in the said suit, and that he share as such complainant in such recovery as may be had and be liable for such costs as may be adjudged against him in said action.

AUG. S. SEYMOUR,
U. S. Judge.

Endorsed: Order making John Stewart a party complainant. Filed December 11th, 1883.

N. J. RIDDICK, *Clerk*,
By V. ROYSTER,
Deputy Clerk.

78 And this cause is continued.

And now, at a circuit court of the United States begun and held for the eastern district of North Carolina, at the court-rooms of said court, in the city of Raleigh, in said district, on the first Monday in June, A. D. 1884, his honor Aug. S. Seymour, district judge, presiding, and on the 11th day of said month of June, A. D. 1884, an admission of counsel is filed in the following words:

Admission of Counsel.

United States Circuit Court, 4th Circuit, Eastern District of North Carolina.

WILLIAM E. CHRISTIAN, for Self and Others,

against

THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY & Others.

In this suit it is admitted that the plaintiffs purchased for value and are now and were at the commencement of this suit the *bona fide* owners and holders of bonds of the State of North Carolina, of the kind mentioned and described in the bill of complaint in this suit, amounting to fifteen thousand dollars in principal, to
79 which are attached interest coupons, past due and unpaid, amounting to over thirteen thousand dollars, Wm. E. Christian being the owner of five thousand dollars in bonds, with coupons attached for over four thousand dollars, and John Stewart being the owner of ten thousand dollars of principal and coupons amounting to nine thousand dollars.

JOS. B. BATCHELOR, *For Self, &*
F. H. BUSBEE, *Att'y of Pl'ffs.*
JOHN GATLING,
Att'y for A. & N. C. R. R. Co.
GRAHAM & RUFFIN.

Endorsed: Filed June 11, 1884. N. J. Riddick, clerk, by V. Royster, deputy clerk.

And afterwards, to wit, on the 13th day of June, 1884, motion is made by defendants to amend answers; motion argued; defendants allowed to amend answers. The plaintiff, by permission of the court, filed a general replication; commissions to take testimony allowed to both parties, and this cause is continued.

And thereafter, to wit, on the 2d day of October, A. D. 1884, the complainant, William E. Christian, by his solicitors, Busbee & Busbee and J. B. Batchelor, comes and files a replication to the answers of the defendants; which said replication is in the words following, to wit:

80 *Replication.*

U. S. Circuit Court, 4th Circuit, Eastern District of North Carolina.
In Equity.

WILLIAM E. CHRISTIAN, for Himself & Others,
against
THE ATLANTIC & NORTH CAROLINA RAILROAD CO. & Others.

This repliant, saving and reserving unto himself all and all manner of advantage of exception which may be had & taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto saith that he doth and will aver, maintain, & prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in law to be replied unto by this repliant, without that, that any other matter or thing in said answers contained material or effectual in law to be replied unto and not herein and hereby well & sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters & things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

BUSBEE & BUSBEE,
J. B. BATCHELOR,
Sol's for Pl'ff.

81 And afterwards, to wit, at rule day, on the first Monday in November, 1884, it being the 3d day of November, 1884, on motion by complainant's counsel, this cause is set down for hearing.

And thereafter, to wit, on the 29th day of November, A. D. 1884, and at a term of the circuit court of the United States begun and held for the eastern district of North Carolina, at the court-rooms of said court, in the city of Raleigh, in said district, on the last Monday in November, A. D. 1884, the Honorable Hugh L. Bond and the Honorable Augustus S. Seymour, judges, presiding, leave to both parties to take depositions is granted.

And the defendants, by leave heretofore granted, come and by their solicitors file an amendment to their answers, to which amend-

ment there is appended an agreement of counsel, said amendment and the agreement thereto appended being in the words and figures following, to wit:

Amendment to Answers.

W. E. CHRISTIAN & Others

vs.

ATLANTIC & N. C. R. R. Co. & Others.

1st. That there is a decree in the court against the defendant company for a large balance, to wit, $——.

82 2d. That there are outstanding bonds of the company, secured by a first mortgage upon its property, amounting to nearly $200,000.

3d. That the outstanding indebtedness of the company for current expenses is as set out in the exhibits filed with the answers.

4th. That said exhibits contain a true account of the application of the moneys which have been received by the defendant company within the time referred to in the pleadings.

Amendments to answers in both cases considered as filed, and agreed that the general replications heretofore filed shall be considered as applying to them as well as other parts of the answers.

BATTLE & MORDECAI,
Of Counsel for Def'ts.
BATCHELOR,
Of Counsel for Pl'ffs.

Endorsed: Amendment to answers. Filed Nov. 29, 1884. N. J. Riddick, clerk.

And this cause is continued.

And afterwards, to wit, at rule day, on the first Monday in May, 1885, it being May 4, 1885, on motion by complainants' counsel, this cause is set down for hearing.

83 And now, at a term of the circuit court of the United States begun and held for the eastern district of North Carolina, at the court-rooms of said court, in the *the* city of Raleigh, in said district, on the first Monday in June, 1885, before the Honorable Hugh L. Bond and the Honorable Augustus S. Seymour, judges, sitting in equity, come the parties aforesaid, by their attorneys aforesaid.

And this cause is set down for hearing on Wednesday, the 10th day of June, A. D. 1885.

And thereupon the defendants, by their attorneys, file a copy each of two certificates of stock held by the State of North Carolina in the said Atlantic and North Carolina Railroad Company and one certificate of F. C. Roberts, secretary and treasurer of the Atlantic & North Carolina Railroad Company, as to the bonded debt, &c., of the said company; which said copies of certificates of stock and said certificate of bonded debt are in the words and figures following:

NORTH CAROLINA, *Treasury Department.*

No. 362. Shares, 10,666.

Atlantic and North Carolina Railroad Company.

Capital, $1,600,000.

Be it known that the State of North Carolina is entitled to ten thousand six hundred & sixty-six shares in the Atlantic and North Carolina Railroad Company, transferable by the said State of
84 North Carolina, either personally or by attorney, only at the office and on the books of said company.

Witness John D. Whitford, president of the said Atlantic and North Carolina Railroad Company at, Goldsboro', N. C., under the seal of the corporation, this 1st day of July, A. D. 1864.

JOHN D. WHITFORD, *President.*

Blank certificates of transfer, unfilled, appended to the above. Shares, $100 each.

A true copy.
(S'g'd)

D. W. BAIN,
State Treas'r.

NORTH CAROLINA, *Treasury Department.*

No. 405. Shares, 2,000.

Atlantic and North Carolina Railroad Company.

Capital, $1,600,000.

Be it known that the State of North Carolina is entitled to two thousand shares in the Atlantic and North Carolina Railroad Company, transferable by the said —— ——, either personally or by attorney, only at the office and on the books of said company.

Witness John D. Whitford, president of the said Atlantic and North Carolina Railroad Company, at New Berne, N. C., under the seal of the corporation, this 24 day of July, A. D. 1867.

JOHN D. WHITFORD, *President.*

85 Shares, $100 each. Blank certificate of transfer, unfilled, appended to the above.

A true copy.
(S'g'd)

D. W. BAIN,
State Treas'r.

Certificate of F. C. Roberts, Sec'ty and Treasurer.

Atlantic & North Carolina Railroad Co., treasurer's office; F. C. Roberts, treasurer.

NEW BERNE, N. C., —— —, 1885.

W. E. CHRISTIAN
vs.
THE A. & N. C. R. R. COMPANY & Others.

I, F. C. Roberts, secretary and treasurer of the Atlantic and North Carolina Railroad Company, do hereby certify that the bonded debt of said company on the first day of May, 1885, amounted to ---------- 196,000 00
That the judgment debt was ---------- 31,023 00
That the debt for coupons unpaid and due Jan'y 1, '85, was ---------- 4,840 00
That the floating indebtedness embracing acc's due in and out of the State was ---------- 1,751 50

New Berne, N. C., May 28th, 1885.
(S'g'd) F. C. ROBERTS,
Sec'y & Treasurer A. & N. C. R. R. Co.

(Endorsed:) Filed June term, 1885.

86 And thereafter, to wit, on the said 10th day of June, A. D. 1885, day set for the hearing of the said cause, before the Honorable Hugh L. Bond and Augustus S. Seymour, judges, sitting in equity, came the parties aforesaid, by their solicitors aforesaid, and the said cause is argued.

And thereupon a decree dismissing said bill of complainant is filed and entered of record in the words and figures following, to wit:

Circuit Court of the United States, Eastern District of North Carolina. In Equity. June Term, 1885.

W. E. CHRISTIAN & Others
against
THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY & Others. } No. 104.

Final Decree.

This cause coming on to be heard upon the bill, answers, exhibits, & proofs and being argued by counsel, now, on consideration thereof, it is ordered, adjudged, and decreed that the plaintiff is not entitled to the relief sought in his bill, and that the said bill be dismissed, and that the defendants recover of the plaintiff and the surety for prosecution their costs in this behalf incurred, to be taxed by the clerk.

(S'g'd) HUGH L. BOND, *C't Judge.*

Endorsed: Decree dismissing the bill. Filed June 10, 1885. N. J. Riddick, clerk, by V. Royster, deputy clerk.

87 *Appeal.*

United States Circuit Court, Fourth Circuit, Eastern District of North Carolina. In Equity.

WILLIAM E. CHRISTIAN and Others, Complainants,

against

THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing Stock Owned by the State in the said Company; John D. Whitford, Chas. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wootten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wootten, President and Directors of said Company, and John M. Worth, Treasurer of said State, Defendants.

A decree dismissing plaintiffs' bill and giving judgment against them for costs being this day filed, now, in open court, the plaintiffs and complainants, through their attorney, Joseph B. Batchelor, pray an appeal from the decree and judgment as aforesaid to the Supreme Court of the United States and assign as error the refusal of the court to grant the relief sought in the bill of complaint in this suit filed and dismissing the same in said decree, &c.

WILLIAM E. CHRISTIAN,
JOHN STEWART,
By JOS. B. BATCHELOR,
Counsel & Solicitor.

88 The prayer & notice of appeal this day made in open court by the plaintiffs and complainants in the above-entitled suit from the decree dismissing their said bill is this day entered of record and allowed.

Bond filed and approved by the court.

George H. Snow, Esqr., one of the attorneys for defendants, being present in court, *and* accepted notice of appeal.

Endorsed: Appeal, &c. Filed June 10th, 1885. N. J. Riddick. clerk, by V. Royster, deputy clerk.

Appeal bond, filed and approved as above, sent herewith.

89 *Appeal Bond.*

In the United States Circuit Court, Fourth Circuit, Eastern District of North Carolina. In Equity.

WILLIAM E. CHRISTIAN & Others, Complainants,

against

THE ATLANTIC AND NORTH CAROLINA RAILROAD COMPANY, F. M. Simmons, Proxy, Representing Stock Owned by the State in the said Company; John D. Whitford, Chas. C. Clark, Henry F. Grainger, W. T. Caho, J. C. Davis, P. F. Faison, J. F. Parrott, C. S. Wootten, Eugene Morehead, John Gatling, James A. Bryan, and John C. Wootten, President and Directors of said Company, and J. M. Worth, Treasurer of said State, Defendants.

Know all men by these presents that we, William E. Christian and John Stewart and Fred. R. Scott, all of the city of Richmond and State of Virginia, are held and firmly bound unto the defendants in the above-entitled suit in the just and full sum of five hundred dollars, to be paid to said defendants, their heirs, executors, successors, assigns, &c.; to which payment, well and truly to be made, we bind our heirs, executors, & administrators, jointly & severally, by these presents.

Sealed with our seal- & dated this 12th day of June, 1885.

Whereas in the above-entitled suit, depending in the circuit court of the United States for the eastern district of North Carolina,
89½ a decree & judgment was rendered by said court against said plaintiffs and complainants in said suit, and the said plaintiffs & complainants have prayed and obtained an appeal to the Supreme Court of the United States from the decree & judgment of the said court in the said suit:

Now, the condition of the above obligation is such that if the said plaintiffs and complainants shall prosecute their said appeal with effect and answer all damages and costs if he [they] fail to make his [their] appeal good, then the above obligation to be void; else to remain in full force & effect.

WM. E. CHRISTIAN, [SEAL.]
By JOS. B. BATCHELOR,
His Attorney.
FRED. R. SCOTT, [SEAL.]
By JOS. B. BATCHELOR,
His Attorney.

Approved:
HUGH L. BOND,
Circuit Judge.

[Endorsed:] No. 104. E. William E. Christian *et al. vs.* The Atlantic & North Carolina Railroad Company and others. Appeal bond. Filed June 10th, 1885. N. J. Riddick, clerk, by V. Royster, deputy clerk.

90 UNITED STATES OF AMERICA, } ss:
Eastern District of North Carolina, }

I, N. J. Riddick, clerk of the circuit court of the United States for the said district, do hereby certify that the foregoing contains a full, true, and perfect transcript and exemplification of the record of said court, wherein William E. Christian and others are complainants and The Atlantic and North Carolina Railroad Company and others are defendants, as the same remain- of record and on file in the office of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, in Raleigh, in said district, this 11th day of March, 1886, and in the one hundred and tenth year of the Independence of the United States.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

N. J. RIDDICK, *Clerk*,
By VITRUVIUS ROYSTER,
Deputy Clerk.

Endorsed on cover: E. North Carolina C. C. U. S. No. 307. William E. Christian *et al.*, appellants, *vs.* The Atlantic & North Carolina Railroad Company *et al.* Filed August 2, 1886.

Office Supreme Court U. S.
FILED.
AUG 26 1889
JAMES. H. McKENNEY,
CLERK.

BRIEF FOR APPELLANTS.

Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 307.

WILLIAM E. CHRISTIAN *et al.*, *Appellants*,

vs.

THE ATLANTIC AND NORTH CAROLINA RAILROAD CO. *et al.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

JOS. B. BATCHELOR,
(of Batchelor & Devereux),
Of Counsel for Appellants.

No. 307.

In the Supreme Court of the United States,

FALL TERM, 1889.

WILLIAM E. CHRISTIAN ET AL., APPELLANTS,

vs.

THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY ET AL.

BRIEF FOR APPELLANTS.

STATEMENT.

This is a suit in equity, brought by the plaintiff in behalf of himself and the holders of certain bonds issued by the State of North Carolina, the payment of which was secured by a statutory pledge of the stock owned by the State in the railroad company defendant.

By an act of the General Assembly of the said State, ratified on the 27th day of February, 1852, and entitled "An act to incorporate the Atlantic & North Carolina Railroad Company and the North Carolina & Western Railroad Company," the defendant company was authorized to be formed and was duly organized as a corporation, for the purposes declared in the said act. By a subsequent act, ratified on the 12th day of February, 1855, entitled "An act to amend an act to incorporate the Atlantic & North Carolina Railroad Company, and the North Carolina & Western Railroad Company," the said company, which had been previously organized under

the act first above referred to, was authorized to increase its capital stock to one million and six hundred thousand dollars.

By the 5th section of the said act it is provided that the State may subscribe for stock in the said company as follows:

"SEC. 5. *Be it further enacted*, That whenever it shall appear to the board of internal improvements of this State by a certificate under the seal of said company, signed by their treasurer and countersigned by their president, that one-third of the capital stock of said company has been subscribed for and taken by solvent individuals or companies, and that at least three hundred thousand dollars of said stock has been paid into the hands of the treasurer of said company, the said board of internal improvements shall be authorized and required to subscribe on behalf of the State for two-thirds of the capital stock of said company, and the subscription shall be paid for in the following manner, to-wit: The one-fourth part as soon as the said company shall commence work, and one-fourth part thereof every six months until the whole subscription in behalf of the State shall be paid; *Provided*, The treasurer and president of said company shall, before they receive the aforesaid instalments, satisfactorily assure the board of internal improvements by certificates under the seal of the said company that an amount of private subscription has been paid in equal proportion to the payment required of the State."

By sections 6, 7, 8, 9 and 10 of said act the said board of internal improvements is authorized to borrow money on the credit of the State, and to secure the same as follows:

"SEC. 6. *Be it further enacted*, That in case the present Legislature shall not provide the necessary and ample means to pay the aforesaid instalments on the stock subscribed for on behalf of the State as provided for in the fifth section of this act, in that event the board of internal improvements is hereby authorized and empowered to borrow on the credit of the State to the amount of two-thirds of the capital of said company as the same may be needed by the requirements of this act."

"SEC. 7. *Be it further enacted*, That in case it shall become necessary to borrow the money by this act authorized, the Public Treasurer shall issue the necessary bonds with coupons attached, signed by the Governor and countersigned by the Public Treasurer and sealed with the Great Seal of the State, and made payable to —— or bearer, and the principal shall be payable at the end of thirty years from the date of the same, and coupons of interest payable semi-annually in such form as may be prescribed by the Public Treasurer shall be attached to the bonds, and the bonds and coupons attached shall be made payable at such bank or place in the city of New York or at the office of the Public Treasurer in Raleigh, as he, the Public Treasurer, may think proper; *Provided, howevr*, That no such bonds shall be issued for a sum less than five hundred dollars, and no bond shall be sold for a less sum than par value, and it shall be the duty of the Public Treasurer to enter in a book to be kept for that purpose a memorandum of the bonds issued by virtue of this act, the number and date of issue, when and where payable, to whom payable, to whom issued and to whom sold and at what premium, if any, the same was (were) sold by him."

"SEC. 8. *Be it further enacted*, That the Comptroller shall register said bonds at large in a book to be kept by him for that purpose, and shall charge the Public Treasurer with the amount thereof, and also with such sums, if any, as the Public Treasurer may obtain by way of premium on the sale of said bonds, an account of which the Public Treasurer shall render to the Comptroller as soon as negotiations from time to time for the sale of said bonds are closed."

"SEC. 9. *Be it further enacted*, That if it shall become necessary to issue the coupon bonds aforesaid the Public Treasurer shall advertise in one or more newspapers, as he may think best, and state in the advertisement thereof that said bonds have coupons attached, and invite sealed proposals for such an amount of the capital stock owned by the State in

said company as may be wanted at any one time, and it shall be his duty to accept those terms which may be most advantageous to the State; *Provided*, That in no event shall any of the said coupon bonds be sold for less than their par value, and any premium which may be obtained on the sale of said coupon bonds shall be placed in the public treasury and used as other public funds in the payment of interest on the debts hereby created, or shall be added to a sinking fund which may be established by the General Assembly."

"SEC. 10. *Be it further enacted*, That as security for the redemption of said certificates of debt the public faith of the State of North Carolina is hereby pledged to the holders thereof, and in addition thereto all the stock held by the State in the 'Atlantic & North Carolina Railroad Company' hereby created, shall be pledged for that purpose, and any dividend of profit which may from time to time be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said coupon bonds; but until such dividends of profit may be declared, it shall be the duty of the Treasurer, and he is hereby authorized and directed to pay all such interest as the same may accrue out of any moneys in the treasury not otherwise appropriated." (See Laws of North Carolina, 1854–'55, ch. 232, p. 298).

FACTS.

The following facts are charged in the bill and are admitted by the answer, and agreed upon by the parties:

1. The Atlantic & North Carolina Railroad Company was duly organized under and by virtue of the act of the General Assembly of the said State, ratified on the 27th day of February, 1852, and that under the provisions of the act ratified the 12th day of February, 1855, the capital stock of said company was increased to one million six hundred thousand dollars.

2. That under the authority conferred by the 5th section of the last said act, the board of internal improvements did subscribe for and on behalf of the State for two-thirds of the capital stock of said company, to-wit: the sum of one million and sixty thousand and six hundred dollars.

3. That to pay for said stock the Public Treasurer was authorized and directed to issue and sell coupon bonds of the State to the amount thereof, and that the Public Treasurer did issue such bonds—which were sold by him at not less than their par value—and applied the proceeds thereof to the payment of the amount of said stock.

4. That there is a large amount of said bonds unpaid, and that the State has paid no interest on them since the 1st day of January, 1869.

5. It is further admitted (see page 46 of printed record) that the plaintiffs are the owners of fifteen thousand dollars of said bonds, to which are attached coupons for interest past due and unpaid amounting to over thirteen thousand dollars.

6. The bill further avers that, by section 10 of the act of February 12th, 1855, the public faith of the State was pledged to the holders thereof as security for the redemption of said certificates, and in addition thereto all the stock held by the State and all dividends on such stock were pledged for the payment of said certificates of debt; and it was further pledged that said dividends should, from time to time, be applied to the payment of the interest accruing on said certificates, and that until such dividends should be declared the Public Treasurer of the State should pay the interest, as the same became due, out of any money in the treasury not otherwise appropriated.

The answers also admit this—the company defendant admitting the pledge (record, page 40, folio 70)—the Treasurer and proxy saying it is a question of construction.

7. It is further admitted that on the 1st day of July, 1864, the said railroad company defendant issued a certificate for ten thousand six hundred and sixty-six shares of its stock to the State of North Carolina of the face value of $100 each.

PRAYER OF THE BILL.

The bill prays:

1. That it may be decreed by the court that the bonds or certificates of debt are a lien on the stock owned by the State in said company and on all dividends which are or may be declared thereon.

2. That all dividends on said stock may be decreed to be paid to plaintiffs and other holders of said certificates, and that a sale of said stock, or such part thereof as may be proper, be decreed to be made for the purpose of paying the past due coupons of said bonds and the bonds when due.

3. That an account be taken of the amount due for arrearages of interest.

4. That a receiver be appointed, for injunction; and for general relief.

While no account has been taken it is admitted that there is a large amount of said bonds still unpaid, and that no interest has been paid since 1st January, 1869, and that there is now a large amount of interest past due and unpaid by the State, and that plaintiffs are *bona fide* owners of $15,000 of said bonds and of $13,000 of past due coupons.

At the time when this bill was filed the bonds were not due; since that time they have all matured and are now due, more than thirty years having elapsed since the passage of the act in February, 1855, under which they were issued.

ASSIGNMENT OF ERRORS.

The plaintiffs in error assign the following errors in the decree rendered by the Circuit Court:

1. That said court erred in holding that the act of the Legislature of 12th February, 1855, and the contract made in pursuance thereof, did not create a lien on, or pledge of the said ten thousand six hundred and sixty-six shares of stock in said company defendant, in favor of the plaintiffs and other holders of said bonds.

2. The court erred in holding that the Circuit Court, as a court of equity, had no jurisdiction of the case made by plaintiffs and no power to give them the relief prayed for, nor any other relief.

3. That said court erred in holding that the State of North Carolina was an indispensable party to this suit, and that no relief could be granted therein without making said State a party, which could not be done under the eleventh amendment to the Constitution.

4. That the said court erred in holding and decreeing that plaintiffs were not entitled to the relief prayed for in their bill, and were not entitled to any relief, and that their bill be dismissed.

From this recital it appears that the material facts are few and simple:

1. The State, having subscribed for this stock, paid for it with the money of the bondholders to whom she sold the bonds. Therefore not one dollar of her money was used to pay for the stock. The bondholders paid for it all.

2. The loan was made not only on the good faith of the State, but also on the pledge of the stock, for its redemption.

3. The certificates of debt embrace both principal and interest.

4. The stock was specifically pledged for the payment of the certificates, including both principal and interest.

PROPOSITIONS OF LAW.

Four propositions of law are therefore presented:

(1). Have the plaintiffs a statutory lien on the stock of the Atlantic & North Carolina Railroad Company standing in the name of the State on the books of the company?

(2). Has the Court of Equity jurisdiction to enforce this lien?

(3). Have the plaintiffs a right to bring this suit to enforce this lien?

(4). Is this jurisdiction of the Court ousted by the fact tha this stock is claimed by the State?

1. Have the holders of the bonds or certificates of debt a statutory lien?

Liens or pledges given by statute have been frequently before the courts of the States, and this Court, and the principles governing them have been declared in many cases.

In Beall *vs.* White, the Court says: "Statutory liens have, without possession, the same operation and efficacy that existed in common law liens when the possession was delivered."

Beall *vs.* White, 94 U. S., 392 (396).

In Wilson *vs.* Boyce the plaintiff claimed under a purchase at a sale under a mortgage made by the company. Defendant claimed under a sale made under a prior statutory lien; the latter title prevailed.

Wilson *vs.* Boyce, 92 U. S., 320.

In White Water Valley Canal Co. *vs.* Vallette, 21 Howard, 414, the Court says: "In the absence of objections to the validity of these bonds there can be no question as to their legal operation and effect, or of the jurisdiction of a court of equity to enforce them. That court treats an agreement for a mortgage or pledge of bonds or other property as binding, and will give it effect according to the intention of the contracting parties." (See p. 422).

In Barrings *vs.* Dabney, 19 Wallace, 1, the State of South Carolina owned all the stock of the Bank of the State of South Carolina. When the State Legislature passed the act of 1865, requiring the directors of the bank to collect its assets and apply them to the payment of the First Loan Bonds, "it created *ipso facto* a trust and made the bank a trustee for the parties provided for by it. It was a trust on which the bondholder, when made acquainted with it, had a right to rely. They became, if they assented to it, *cestuis que trust*, with vested rights. Being made for their benefit it will be presumed that they did assent to it if they expressed no

dissent. * * * In this case it is true no actual assignment was made. But for the purpose of creating a trust it was not necessary. The act was a law of the State making the corporation a trustee. The creation of this trust in favor of the bondholder, if valid, was a contract with them; confiding in it they would desist from further effort to secure the payment of their claim by adverse proceeding. It would be unjust to them to abrogate it and place them where they stood when the trust was created. The repeal of the section in question did impair the validity of this contract, and if the latter was valid was a violation of the Constitution."

See also Woodson *vs.* Murdock, 22 Wallace, 351.

United States *vs.* U. P. Railroad Co., 91 U. S., 72.

Ketchum *vs.* Pacific R. R. Co., 101 U. S., 306.

Whitehead *vs.* Vineyard, 50 Mo., 30.

Collins *vs.* Central Bank of Georgia, 1 Kelly (Ga.), 435.

The building of this railroad was a matter of immense importance to the State, involving the expenditure of over a million of dollars in money and affecting the interests of the people of a large section far beyond the mere money consideration. Some of the greatest minds of the State were interested in it and had it in charge; notably, Governor Morehead, a former Governor, for whom the city at the eastern terminus of the road was named and who is regarded as the father of the work. That a contract was intended to be made, and that the leading and most important provisions of that contract were intended to be embraced in this act of the Legislature cannot be doubted. That an act of the Legislature can be made a contract *inter partes*, of binding obligation, and which cannot be impaired even by a sovereign State is one of the fundamental principles on which our system is built. To this act and the contract thereby made there were three parties—the State, the railroad company and the purchaser of the bonds. While parts of the contract have been fully executed it is still, as to a part, executory, and it is as to one of these parts that

a question is now attempted to be raised. The State issued the bonds, sold them in the market, received the money and with it paid for the stock. The railroad company received the money—the proceeds of the sale of the bonds—and accepted the State as a stockholder, but did not issue the certificate of stock; *that was not done until first day of July*, 1864 (see record, page 49), nine years after the money was paid.

The purchasers accepted the bonds and paid the money for them, which paid for this stock. All this was done under the provisions of this act, which formed the basis of the contract of the parties, and in which it was declared that in addition to the public faith of the State of North Carolina, which is pledged as security for payment of said bonds "all the stock held by the State in the Atlantic & North Carolina Railroad Company hereby created *shall be pledged for that purpose.*" * * And on the face of the bonds is printed the title of the act under which they were issued. Like all other contracts, this is to be construed by the language used by the parties, and their intent, when thus ascertained, will be carried into effect by the courts. As above stated, this contract has been executed by the parties as to most of its provisions. A very important part, however, remains unexecuted—the payment of the money now due on these bonds. And, although the public faith of the State is pledged to this, this pledge has proved worthless, because the courts have no power to enforce it, and the resistance now made to this suit demonstrates how worthless pledges are which courts cannot enforce.

This was known to the purchaser when he purchased these bonds. But on examining the act he saw in this contract another security of value which was pledged to him, and which the courts could enforce. He saw that it was provided that *this stock shall be pledged to the payment of these bonds*, and he knew that the corporation had notice of this pledge. He knew that a corporation was a trustee and held and managed its stock, first, in trust for its own creditors, and secondly, for the benefit of its stockholders (Upton *vs.* Trebilcock, 91 U.

S., 47; 2 Story Eq., §1252), and that this applied to the equitable as well as the legal stockholders, and that there could be an assignment or pledge of the stock which, in a court of equity, was perfectly valid and would be enforced, and after notice was fully binding on the corporation. He could therefore safely trust this security which would afford him a legal remedy should it become necessary to resort to it, and on this security he parted with his money. And relying on the principles declared in the cases first cited, he now asks the court to give him the benefit of this security so solemnly pledged. But the State, refusing payment of both principal and interest of these bonds, says nay! I made no such pledge. True, I used the words which are quoted, but I meant nothing by them; that they "little meaning, little relevancy bore," and I now claim to be exempt from suit, in order that I may avoid paying this debt, thus contracted, and continue to hold the stock paid for with the money of the purchaser of these bonds.

In Woodruff *vs.* Trapnall, 10 Howard, 190, the Court says: "We naturally look to the action of a sovereign State to be characterized by a more scrupulous regard to justice and a higher morality than belong to the ordinary transactions of individuals. The obligation of the State of Arkansas to receive the notes of the bank in payment of its debt is much stronger than in the case of individual guaranty."

It would seem that the highest obligation was on the State to pay these bonds, or at least not to deny the plain meaning and intent of the parties as shown by the words used.

In Swasey *vs.* The North Carolina Railroad Company and others, 1 Hughes' C. C. Reports, 17, the words giving the lien are nearly identical with those used in this act. In North Carolina a parol trust, even of real estate, is binding, and when property is conveyed to a trustee in trust to secure debts a creditor who does not know of the trust when declared may accept it as soon as he has notice, and it becomes binding and cannot be altered by the trustor or debtor.

Ingram *vs.* Kirkpatrick, 6 Ire. Eq., 463.

And the creditor will be presumed to accept, nothing appearing to the contrary. And in Barrings *vs.* Dabney, *supra*, the Court held that the statute *created a trust* in favor of the bondholder, and as long as the bonds can be made payable to bearer the trust can be declared in the same way. Hence there is no necessity for naming the bondholder; the security attaches to the bonds and follows them into whosoever hands they may come.

Curran *vs.* Arkansas, 15 Howard, 304.
Woodruff *vs.* Trapnall, *supra*.
Furman *vs.* Nickols, 8 Wallace, 44.
Swasey *vs.* N. C. R. R. Co., *supra*.
Barrings *vs.* Dabney, *supra*.

Having, as we submit, sustained our first proposition, we come now to the second.

2. Has the Circuit Court, sitting as a court of equity, jurisdiction of this suit?

On this point it can hardly be necessary to bestow much labor.

The second section of the third Article of the Constitution is: "The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made under its authority.

"Chancery jurisdiction is conferred on the Courts of "the United States, with the limitation 'that suits in equity "'shall not be sustained in either of the Courts of the United "'States in any case where plain, adequate and complete re-"'lief may be had at law.' The rules of the high Court of "Chancery of England have been adopted by the Courts of "the United States. And there is no other limitation to the "exercise of chancery jurisdiction by these Courts, except the "value of the matter in controversy, the residence or charac-"ter of the parties, or a claim which arises under a law of "the United States, and which has been decided against in a "State court."

Penn *vs.* Wheeling, &c., Bridge, 13 Howard, 563.

In Fontain *vs.* Ravenel, 17 Howard, 384, the Court says: "The Courts of the United States cannot exercise any "equity powers except those conferred by acts of Congress, "and those judicial powers which the high Court of Chancery "in England, acting under its judicial capacity as a court of "equity, possessed and exercised at the time of the formation "of the Constitution of the United States."

To the same effect are:

Robinson *vs.* Campbell, 3 Wheaton, 212.
Boyle *vs.* Zacharie, 6 Peters, 658.
Fitch *vs.* Creighton, 24 Howard.
Barber *vs.* Barber, 21 Howard, 591, 592.
Canal Company *vs.* Gordon, 6 Wallace, 561.
Massie *vs.* Watts, 6 Cranch, 148.
Payne *vs.* Hook, 7 Wallace, 430.

In Irvin *vs.* Marshall, 20 Howard, 565, the Court says: "With respect to resulting trusts and the jurisdiction and "duty of the Courts of the United States to enforce them, "the opinion of this Court has been emphatically declared; "and so declared in a case of peculiar force and appositeness, "because it related to the acts of an agent in the entry and "survey of lands, and is, in its principal features, essentially "the same with the case under consideration."

See also Clark *vs.* Smith, 13 Peters, 195.

In the case now before the Court it is certain that not only no "plain, adequate and complete relief may be had at law," but no relief whatever can be had at law. It is equally clear that if any relief at all can be had, it must be had in a court of equity, and courts of chancery in England always exercise jurisdiction in cases like this.

RIGHT OF BONDHOLDER TO SUE.

3. Having shown that the charter of the company defendant, and the act amendatory thereof, created a lien on the stock of the State, and a trust, and that the Court of Equity

has jurisdiction to enforce this lien, our next inquiry is, can the plaintiffs enforce this lien? We submit that the plaintiffs, being the *bona fide purchasers for value and owners* of fifteen thousand dollars of these bonds, and of over thirteen thousand dollars of the past due coupons, can enforce any security which the original purchasers had or could enforce. This is decided in Woodruff *vs.* Trapnall, 10 How., 190; Davis *vs.* Gray, 16 Wallace, 221; Curran *vs.* Arkansas, 15 Howard, 304; Furman *vs.* Nickols, 8 Wallace, 44; Darrington *vs.* Alabama, 13 Howard, 17.

This brings us to the last question, which is:

4. Does the fact that the State claims to be the owner of this stock oust the jurisdiction of the court?

The State is not a party on this record. The suit is against the railroad company, and its board of directors and the proxy appointed by the Governor to represent the stock of the State in the meetings of the stockholders of the company, and the Public Treasurer of the State.

Under the Constitution as at first adopted, and up to the adoption of the eleventh amendment, it was settled that a State could be sued by a private citizen (Chisholm *vs.* Georgia, 2 Dall., 419; Grayson *vs.* Virginia, 3 Dall., 320). The eleventh amendment was adopted in consequence of the decision in Chisholm *vs.* State of Georgia, and to change the law in this respect. It is in these words, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State. Under this provision it is settled that no suit can be prosecuted against a State by the citizens of another State, or by citizens or subjects of any foreign State, by original process issuing against the State.

This section has given rise to much litigation, and many decisions have been made involving the question of jurisdiction of courts of the United States.

The contention of the defendants on this point is, that if any case is made in the bill proper for the interference of a court of chancery, it is against the State of North Carolina, in which case the Circuit Court could not exercise jurisdiction.

For the proper consideration of this point it must be conceded that plaintiffs have sustained their claim to a lien on this stock, and that the court has jurisdiction of the subject-matter of the suit and of the parties on the record, and can grant the relief prayed for, unless defendants can show that the suit is against the State and that she is an indispensable party on the record, without whose presence no relief can be granted. The burden is therefore on the defendants to show the want of jurisdiction for which they contend.

The plaintiffs contend that "the State not being a party on the record, and the court having jurisdiction over those who are parties on the record, the true question is not one of jurisdiction, but whether in the exercise of its jurisdiction the court ought to make a decree against the defendants; whether they are to be considered as having a real interest, or as being only nominal parties."

Osborne *vs.* The Bank, 9 Wheaton, 858.

On this point the leading authorities are:

Osborne *vs.* The Bank of U. S., 9 Wheaton, 859.
U. S. *vs.* Peters, 5 Cranch, 115.
Curran *vs.* Arkansas, 15 Howard, 304.
Woodruff *vs.* Trapnall, 10 Howard, 206.
Furman *vs.* Nickols, 8 Wall., 44.
U. S. Bank *vs.* Planters' Bank, 9 Wheaton, 907.
Brisco *vs.* Bank of Kentucky, 11 Peters, 257.
L. R. R. Co. *vs.* Letson, 2 Howard, 304.
Darrington *vs.* Alabama, 13 Howard, 17.
State *vs.* Stoll, 17 Wall., 425.
Barrings *vs.* Dabney, 19 Wallace, 1.
Elliott *vs.* Vanvoorst, 3d Wall., Jr., 299.
Wabash and E. Canal Co. *vs.* Beers, 2 Black., 448.

U. S. *vs.* Wilder, 3 Sum., 308.
Davis *vs.* Gray, 16 Wallace, 203.
Board of Liquidation *vs.* McComb, 92 U. S., 531.
Louisiana *vs.* Jumel, 107 U. S.
Cunningham *vs.* M. & B. R. R. Co., 109 U. S., 446.
Ketchum *vs.* St. Louis Co., 101 U. S., 306.
Swasey *vs.* North Carolina Railroad Company, appendix to 71 N. C. Reports at 571; same case, 1st Hughes, C. C. R., 17.

Looking to the principles decided in these cases, we submit that here are several classes of cases in which the court has always exercised jurisdiction, and that, too, in many instances where an officer of a State is a party and the State itself is interested in the subject-matter of the suit, and these cases have never been questioned in any court.

In the case of Osborne *vs.* The Bank (9 Wheaton, 839) this court says: "If the State of Ohio could have been made a party defendant it can scarcely be denied that this would be a strong case for an injunction. The objection is, that as the real party (the State) cannot be brought before the court, a suit cannot be maintained against the agents of that party. * * But if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversion of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him could his principal be joined in the suit. It is admitted that the privilege of the principal is not communicated to the agent; why should not the preventive power of the court also be applied to him? * * The sixth point made by the appellants is, that if any case is made in the bill proper for the interference of a court of chancery it is against the State of Ohio, in which case the Circuit Court could not exercise jurisdiction. * * * The interest of the State is direct and immediate, not consequential.

The process of the court, though not directed against the State by name, acts directly upon it by restraining its officers. The eleventh amendment to the Constitution has exempted the State from suits of citizens of other States or aliens, and the very difficult question is to be decided whether in such a case the court may act upon the agents employed by the State and on the property in their hands. * * The principle seems too well established to require that more time should be devoted to it. It may, we think, be laid down as a rule which admits of no exception, that in all cases where jurisdiction depends on the party it is the party named in the record. Consequently the eleventh amendment is of necessity limited to those suits in which a State is a party on the record. The State not being a party on the record, and the court having jurisdiction of those who are parties on the record, the true question is not one of jurisdiction, but whether in the exercise of its jurisdiction the court ought to make a decree against the defendants; whether they are to be considered as having a real interest or as being only nominal parties. * * It is in a court of equity alone that the relief would be real, substantial and effective." The ruling in this case is affirmed in a long line of cases coming down to the present time.

Davis *vs.* Gray, 16 Wallace, 203, at p. 220, and cases cited.

United States *vs.* Lee, 106 U. S., 196.

Board of Liquidation *vs.* McComb, 92 U. S., 531.

In Davis *vs.* Gray the Court says: "The true principle is that the jurisdiction of the Circuit Courts of the United States cannot be denied or taken away on account of a State having an interest in a suit, unless the State is a party on the record."

Osborne *vs.* The Bank, 9 Wheaton, 852.

This must be the rule under our system, whether the jurisdiction of the court is denied on account of any interest which a State may have in the subject-matter of the suit, or when it is alleged that jurisdiction does not exist, on account of the character of the parties." 16 Wall., 220.

In Osborne *vs.* The Bank, Woodruff *vs.* Trapnall, Curran *vs.* Arkansas, Furman *vs.* Nickols, Darrington *vs.* Alabama, State *vs.* Stoll, Barrings *vs.* Dabney, Wabash *vs.* Beers, Davis *vs.* Gray, Board of Liquidation *vs.* McComb, and Swasey *vs.* N. C. Railroad Company, States were not only interested in the subject-matter of the suit, but were the only parties whose interests were affected by the judgment of the Court. In several of them the liens which were administered and enforced were given by statute, and had no existence outside of the statute. Yet in all these cases the Court did not hesitate to take jurisdiction and declare and enforce the rights of the parties interested. In no case has the rule laid down in the opinion of the Chief Justice in Osborne *vs.* The Bank as being without exception been questioned. In the case of Louisiana *vs.* Jumel, the Court holds that to exercise jurisdiction in that case would be to control the officer in the exercise of the essential functions of his office, and to direct and control some of the essential functions of the State government, and to direct how State moneys should be applied.

In *ex-parte Ayre*, 122 U. S., the Court says that "a suit to restrain the officers of the State from bringing a suit in her name for the collection of her revenue is clearly an action against the State. In both these cases, therefore, the rule did not apply, and they came within the operation of the eleventh amendment.

In many of the cases above cited, Curran *vs.* Arkansas, Woodruff *vs.* Trapnall, Furman *vs.* Nickols, Barrings *vs.* Dabney, and Board of Liquidation *vs.* McComb, the State was the sole owner of the stock of the bank and the fund which was administered by the court, and which was the subject-matter of the litigation, and in all these cases the jurisdiction was exercised and sustained. In Swasey *vs.* N. C. Railroad Company, 71 N. C. Reports, 571 (appendix), same case, 1 Hughes, C. C. Reps., 17, the C. J. says, after referring to Osborne *vs.* The Bank, "It has long been held, however, that

this amendment applies only to suits in which a State is a party on the record, and not to those in which she has an interest merely." The State of North Carolina was the sole owner of the subject-matter of the litigation, which was $3,000,000 of stock in the defendant company and dividends thereon. These dividends to the amount of over $2,000,000, belonging to the State, have been received by the receiver appointed by the Court in the suit, and distributed, by order of the Court, among the holders of the State bonds, for the payment of which a lien was given by the charter of the company, almost identical with that now under consideration. This case was before this Court at October Term, 1874—23d Wallace, 405. The appeal was dismissed because the order appealed from was interlocutory and not final. In the opinion the Court says: "The amount of the debt which the State must pay, in order to stop the sale, has not been determined. Neither has it been determined what amount of stock may be sold if the debt is not paid." * * * "Thus far the Court has done no more than to declare that for the security of the payment of so much as is due the plaintiff, and those he represents, have a lien on their equitable proportion of the stock and that the lien may be enforced by sale, if payment of the debt is not made." This opinion was filed by the Chief Justice, who tried the case and gave the order in the Circuit Court, from which the appeal was taken. The Court was therefore cognizant of all the facts, and knew that orders by which the dividends which were declared on the stock owned by the State had been distributed among the bondholders to a large amount, and the Circuit Court continued to make such orders of distribution from time to time from that time up to the present, having in this way distributed and paid out over $2,000,000 of the funds of the State. We cannot, therefore, allow ourselves, for a moment, to entertain the idea that there was any doubt felt by the Court as to its jurisdiction, when the Chief Justice and his learned associates made these

orders of distribution, disposing of the fund as fast as it was received by the receiver, thus placing it beyond control and depriving the State of her property in a suit where every order might be ultimately declared void, because the Court had no jurisdiction of the suit in which they were made, and the only party affected by the suit was not and could not be made a party thereto.

It may be said that this opinion of the Chief Justice was delivered before the decision of this Court in Louisiana *vs.* Jumel and Cunningham *vs.* The M. & B. Railroad Company, *supra*. That these decisions did not change the opinion of the Chief Justice is evident from the fact that the receiver appointed by the Court has continued to receive the dividends declared by the company on the stock owned by the State therein, amounting to $180,000 a year, and the Court has, from year to year, ordered this sum to be distributed among the bondholders; and from the further fact that one J. T. McClelland filed a bill or petition in the cause, alleging that he was the holder of another and different class of State bonds, which he contended had a statutory lien on the same stock. At the ..... Term, 188..., of the Circuit Court, this petition was heard before a full bench, and the learned Chief Justice then filed another opinion, affirming his decision in the Swasey suit, as follows:

1. "The statutory pledges of the stock of the State in the "North Carolina Railroad Company to secure the payment "of bonds issued under the acts of January 27th, 1849, and "February 14th, 1855, to pay its subscriptions, created a "valid first lien on the stock in favor of the holders of the "bonds, and the entire stock was pledged for the payment of "the entire debt. As between the holders of the bonds, the "security was divisible and each bondholder was entitled in "equity to the benefit of his proportion of the stock for his "individual protection. Payment of part of the debt did "not operate as a discharge of the lien on a corresponding

"part of the stock, but the whole of the remaining stock "would be bound for the whole of the remaining debt.

2. "It was held in Swasey's case that the charter of the "North Carolina Railroad Company made that company 'the "'depositors of the pledge to hold it for both parties, according "'to their respective interests.' The stock 'at its reception be-"'came charged as security for the payment of the debt of the "'State contracted on its account. This was part of the law "'of its creation.' For this reason that suit was maintained "without the presence of the State as a party. Looking at "the statutes by themselves, we were of the opinion that the "power had been granted to the bondholders to use the "machinery of the courts to enforce the security by a proceed-"ing against the railroad company as the representative of "the State."

The opinion in the Swasey suit will be found as an appendix to 71st volume of North Carolina Reports, page 571, and in 1 Hughes' C. C. R., 17. We are unable to discover any difference between the principles declared by the Court as governing in that case and those which should govern in this.

In the United States Bank *vs.* Planters' Bank, 9 Wheaton, 907, the Court says: "It is, we think, a sound principle that when a government becomes a partner in any trading company it divests itself, so far as concerns the affairs of that company, of its sovereign character and takes that of a private citizen." This principle has been affirmed in many subsequent cases, and never questioned or doubted. Curran *vs.* Arkansas, Furman *vs.* Nickols, Barrings *vs.* Dabney, and other cases. The fact that the State was the sole owner of the stock of a bank did not change the relations of the corporation with the persons with whom it had dealings, and the courts applied to it the same rules and principles of decisions which it applied to other corporations and trading companies in which individuals alone were interested.

Any lien or pledge of stock of property was as rigidly applied and enforced in one case as in the other, whether declared by statute or arising in any other way. The Court never hesitates to exercise any jurisdiction in reference to such companies which it would have exercised if individuals had been sole owners and interested parties in the suit, and in many of these suits the State was the only party really interested and affected by the result. It was only when property was to be taken from the actual possession of the State and the State was a party on the record, as in Cunningham *vs.* M. & B. Railroad Company and others, or when by the exercise of the jurisdiction invoked the Court was called upon by its order and judgment to control and direct the State officer in the discharge of the essential duties of his office pertaining to the sovereign rights of the State, or in some sort to control and manage the affairs of the State in some of its essential functions, or to enforce some matter of contract or obligation which could only be executed by and through the State itself, that the courts have refused to exercise jurisdiction and give relief. Such was the case of Louisiana *vs.* Jumel, where the Court refused to exercise jurisdiction because the matter had passed beyond the point when the Court could give relief through the officers of the State without an interference with the sovereign rights and functions of the State, whereas in the case of the Board of Liquidation *vs.* McComb the matter was still in that situation where the Court could give relief through the officers. The case of Osborne *vs.* The Bank is another illustration of the same principle. There the money collected by the officer had not been paid into the State treasury, but was still held by him, and in his hands was reached by the judgment of the Court. If it had been paid into the treasury it would have been beyond the reach of the Court, which could never have caused it to be refunded.

In the Swasey suit and in this suit the property or thing in question was never capable of actual manual possession. *It was a chose in action, or right*, and such right as the State had, passed from her by the statutory lien or assignment, and *ipso facto* by the statute. According to Barrings *vs.* Dabney, *supra*, and Beall *vs.* White, *supra*, the railroad company is constituted the trustee or stakeholder of the fund or property which constitutes this security. By one and the same act, the State issues the bonds which are sold and purchased by plaintiffs or their assignors; she applies the money thus received to the purchase of this stock, and pledges the stock, thus purchased, to the payment of the bonds. "The stock at its inception became charged as security for the payment of the debt of the State contracted on its account. This was part of the law of its creation." (Swasey's case). It is one and the same transaction; done at the same time and under the same authority, and all the parties concurring in the same purpose. The railroad company accepts the State as a stockholder on payment by State for the stock. The State issues the bonds and gives a lien on the stock to secure their payment, and the purchaser of the bonds takes them with this lien on the stock as security for their payment. This, in equity, constitutes a statutory trust or lien (Barrings *vs.* Dabney, *supra*, Beall *vs.* White, *supra*), of which the railroad company and all others have notice, and the State by taking this stock, and becoming a partner or stockholder in the company, and pledging the stock as security for the debt, all in the same transaction, to which the State, the railroad company and the bondholders are all parties, assumes the position of an individual stockholder and is liable in this Court to be dealt with as any other stockholder may be. The railroad becomes as to this security a constructive trustee, and having notice of the trust, should it deal with the fund in any way not consistent with the rights of the bondholders, it would incur a liability co-extensive with the breach of trust, as was said in Curran *vs.* Arkansas, 15 Howard, 308.

"The obligations of its contracts, the funds provided for their performance, and the equitable rights of its creditors were in no way affected by the fact that a sovereign State paid in its capital, and consequently became entitled to its profits. When paid and vested in the corporation the capital stock became chargeable at once with the trusts and subject to the uses declared and fixed by the charter to the same extent and for the same reasons as it would have been if contributed by private persons," and on page 309, "that a State, by becoming interested with others in a banking corporation, or by owning all the capital stock, does not impart to that corporation any of its privileges or prerogatives, that it lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege in respect to those transactions not derived from the charter, has been repeatedly affirmed by this Court as in the Bank of the United States *vs.* Planters' Bank, 9 Wheaton, 904; Bank of Kentucky *vs.* Wistar, 3 Pet., 431; Briscoe *vs.* Bank of Kentucky, 11 *Ibid.*, 324; Darrington *vs.* Bank of Alabama, 13 Howard, 12. And our opinion is that the fact that the capital stock of this corporation came from the State which was solely interested in the profits of the business does not affect the complainant's right, as a creditor, to be paid out of its property; a right which, as we have seen, follows the fund into the hands of every person save a *bona fide* creditor or purchaser, and which a court of equity is bound to enforce by its decree against any party, except such creditor or purchaser, capable by law of being brought within its jurisdiction."

The creditor, therefore, now brings this suit against the railroad company and others; shows that he has this lien created by the State in her dealings with him and the company in one and the same transaction to which all are parties, and now prays the Court to make this lien serve the purpose for which it was created, by having the dividends of the stock, if any there be, applied to the payment of the interest on the

debt, and if not sufficient then the stock itself sold and the proceeds applied to the satisfaction of the debt. This was declared to be the right of the parties in the Swasey suit.

By way of illustration, suppose a dividend should be declared by the company and the State should demand such dividend; the bondholders knowing the impossibility of getting the money out of the treasury of the State, when once it reaches that haven, however good their legal or moral right to it may be, give notice to the company not to pay it to the State, because of their lien under the charter of the company; the railroad company being thus notified of the rights of the bondholders, and that it would incur responsibility to them by paying to the State, would decline to do so; what could the State then do? She can be only a stockholder in the company with no right which is not common to all other stockholders. She has no *legal* means of collecting dividends not common to all. Is it not therefore clear that the only real right which the State ever had is a right of action? and does it not necessarily follow, first, that if the State should bring such action against the company, it could plead the pledge contained in the charter as a complete defence to such action; and secondly, if the company should pay to the State after such notice from the bondholders it would become responsible to them, and they could bring suit against it without joining the State as a party. This reasoning applies with equal force to any attempted transfer or use of the stock.

We submit that the cases of Curran *vs.* Arkansas, Furman *vs.* Nickols, Barrings *vs.* Dabney, Darrington *vs.* Bank of Alabama, as well as the general doctrine of equity that he who purchases a legal title with notice of a subsisting equity, holds subject to such equity (2 Story Eq. Jur., §1252) all sustain these positions. Then the inquiry naturally arises, why is this so? to which the answer is apparent; the company is a trustee and holds its stock for the parties really entitled to it and can do nothing to affect the rights of any party whether in law or equity after notice of such rights.

4 Wabash *vs.* Beers, *supra.*

It being made plain by this reasoning that the company is a trustee for the bondholders, they may bring suit against it to compel the execution of this trust.

The State being a stockholder in the company "does not impart to that corporation any of its privileges or prerogatives." "Instead of communicating to the company its privileges and its prerogatives it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates and to the business which is to be transacted," nor does it impart any special immunity to the property claimed by it. The company cannot therefore claim an immunity from this suit by reason of its connection with the State. In its character of trustee it owes a duty to the plaintiffs which the Court can enforce without making the State a party.

If the State could have been made a party probably it would have been done, but under the provisions of the eleventh amendment the State is exempt from suit by citizens of other States; "but if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the law cannot afford the same remedies against the agent employed in doing the wrong which they would afford against him, could his principal be joined in the suit."

Osborne *vs.* The Bank, *supra*, 842.

Swasey *vs.* Railroad, *supra*.

Here the defendant company *is not a State officer*, but a citizen, having rights, holding property and owing duties like any other citizen. When, therefore, we have before the Court parties over which it has jurisdiction, and can, through them, declare the rights of the plaintiffs, it will not deny them justice, and close the portals of its temples, against them because another party, who claims an interest which is subordinate to

that of plaintiff, in the property which is the subject-matter of the suit, but over whom the Court has no compulsory jurisdiction, claims the benefit of its exemption for no other purpose than that the ends of justice may be defeated.

CERTIFICATE OF STOCK ISSUED—WHEN ISSUED.

On the trial in the Circuit Court the point was made on behalf of defendants that the fact that the certificate of stock had been issued by the company to the State distinguished this case from the Swasey suit. On the contrary, we contend first, that this fact shows a breach of trust by the company, and would therefore of itself sustain this suit and the jurisdiction claimed; and secondly, whether it was a breach of trust or not, the fact thus relied on cannot defeat plaintiff's equity, or the jurisdiction of this Court to enforce it.

On the first ground. It is well settled, and the authorities before referred to, and those which will be referred to on the second point, declare this principle, that a corporation is a trustee for its stockholders (after all its debts are paid); that its stock is not a thing capable of manual possession, but something existing in law or contract, like a chose in action, and that this thing is capable of assignment and transfer like any other thing or right. Now, what are the facts? Here is a corporation duly formed; the State is a corporator *holding two-thirds of the stock and appointing eight out of twelve of the directors.* By the same act and at the same moment of time *eo instanti*, when the State acquired this stock, by virtue of the statute, the lien attached to it and the statute creates a trust and an equitable assignment. The corporation, as such, has notice of all this, which it now admits.

The corporation therefore becomes trustee for the equitable assignee. *No certificate of stock is issued to the State until nine years after all this is done.* Then the corporation attempts to issue a certificate of stock to the State for two-thirds of its stock. In other words, the State having the control of the cor-

poration, being the owner of two-thirds of its stock and appointing two-thirds of its directors, issues this certificate of stock to itself, in violation of the duty which the corporation owes to the bondholders, and having thus, as she now contends, got legal possession of the stock, and being exempt from suit on account of her sovereignty, now mocks at and derides those whom she has thus injured. This is not only a breach of trust on the part of the corporation; it is a fraud which a court of equity not only will not tolerate, but will be quick to redress. Trusts and frauds are fruitful sources of chancery jurisdiction. This contention of defendants suggests both.

A court of equity unquestionably has jurisdiction to redress this wrong, and the corporation is the only necessary party for this purpose. The agent who has perpetrated this wrong cannot claim the exemption which attaches to his principal, but is responsible for all the consequences of the wrong which it has committed.

Besides it will not escape the attention of the Court that this certificate was issued *first July*, 1864, when the State as a member of the Confederate States was at war with the United States, and when defeat and ruin, both individual and State, were inevitable.

On the second ground above stated—the corporation is the legal entity, created by the charter, and is capable of acting, contracting, acquiring and holding property. Its stock is the property in which it is invested and which it is allowed to hold, control, use and apply in any way it may think proper, within the limits of the powers granted in the charter. The corporation is a trustee and holds the stock, or more accurately, the property in which it is invested, in trust for its creditors first, and secondly, for its stockholders.

Vase *vs.* Grant, 15 Mass., 505.

Wood *vs.* Dummond, 3 Mason C. C. R., 368.

Opinion by Judge Story, 2 Story Eq. Jur., §1252.

Upton *vs.* Trebilcock, 91 U. S., 47.

The stock, for the convenience of parties and the better management, use and transfer of interest therein, is divided into shares; one share being the unit of value or interest in the company. The stockholders, have no interest in the stock as such. It is indivisible and cannot be divided among the stockholders, because if it were divided among them that would at once destroy the corporation, for without its stock it is nothing, and if that is used and consumed by the stockholders it is gone, and is no longer in the corporation. A share of the stock is only a right to participate in the management of the affairs of the corporation as the charter provides, to receive a part of such dividends as may be declared by it, and when the corporation shall cease to exist to receive a part of its assets then remaining. "By bank stock," says the Supreme Court of Tennessee, "is meant individual interest in the dividends as they are declared and a right to a *pro rata* distribution of the effects of the bank on hand at the expiration of the charter, and the capital stock of the bank is the whole undivided fund paid in by the stockholders, the legal right to which is vested in the corporation, to be used and managed in trust for the benefit of the members."

Union Bank of Tennessee *vs.* The State, 9 Yerger (Tenn.) R., 490.

"Although bank shares may be said to indicate or represent the proportion of interest which the shareholder has in the property of every kind belonging to the company, yet it cannot be said with any propriety that he is in the actual possession of the common property of the bank any more than the owner of a bond or note is in the possession of the money of which it is the representation. The only possession the holder has is the certificate, which is merely the evidence of his interest, as *title* deeds are of *title* to land, but not of possession. That stock cannot be considered in the light of a thing in possession, and personal estate as distinguished from a chose in action would also appear from this, that at common

law it could not be taken in execution and sold for debts."

Slaymaker *vs.* Gettysburg Bank, 10 Barr (Penn.) R., 373.

It has been made so in Massachusetts and some other States by statute. "If," says Chief Justice Shaw, "a share in a bank is not a chose in action, it is in the nature of a chose in action, and what is more to the purpose it is personal property." Hutchins *vs.* State Bank, 12 Met. (Mass.) R., 421, and to the same effect Palmer *vs.* Merrill, 6 Cush. (Mass.) R., 282, in which it is decided that an assignment of a *chose* in action vests an equitable interest in the assignee with right of action, etc. In England it is settled by the case of Duncuft *vs.* Albrecht, 42 Sim. & Stu., Ch. R., 189, that parol agreement for the sale of shares of railway stock is valid, for they are neither an interest in land nor goods, wares or merchandise under the statute of frauds. This case is approved in Johns *vs.* Johns, 10 Ohio R. (N. S.), 350.

A person to whom *bona fide* shares have been transferred will hold them without any certificate. In a case in Massachusetts in which the objection was made that the plaintiff had no certificate of his ownership of shares (though he had an instrument of transfer), the Court said: "We think that cannot prejudice his claim, as it is not in his power to obtain one without the consent of the corporation."

Agricultural Bank *vs.* Burr, 11 Shep. (Me.) R., 256.

Same *vs.* Wilson, *Ib.*, 273.

It was strongly insisted in another case that the defendant could not be a member of the Chester Glass Company without a certificate of his shares; it being provided by the act respecting manufacturing corporations that the stock shall be divided into shares, and that certificates shall issue to the stockholders; and "the Court held that it was not essential that certificates should have issued, and that the corporation might be compelled, if there was a court of chancery, to give certificates, and for want of them a stockholder would not lose his rights."

Chester Glass Co. *vs.* Drury, 16 Mass. R., 94.

See also to same effect Bank of England *vs.* Moffitt, 3 Brown Ch. R., 262.

In Arnold *vs.* Ruggles, 1 R. Island R., 165, the Court says: "A share is a mere ideal thing—it is no portion of matter, it is no portion of space, it is not susceptible of tangible and visible possession, actual or constructive. It is not, therefore, a chattel personal, susceptible of possession, actual or constructive." "If a right be an ideal thing merely, or something existing but in law or contract, the possession must be ideal, subsisting from law or contract." The wife's shares in a corporation would not, therefore, vest in the husband *jure marite* merely, but only when reduced to possession as other choses in action.

In Hawley *vs.* Upton, 102 U. S., 314, the Court says: "A certificate in his favor for the stock is not necessary to make him a stockholder."

From these cases it would seem to be well settled by authority and on principle, that a right to shares in a corporation is a chose in action, and that the certificate is only the evidence of such right as deeds are evidence of title to land—that this chose in action may exist for all purposes without a certificate being issued, as it did exist in this case for nine years after the corporation was organized and acting and had completed its road; that this chose in action is capable of being assigned and transferred, and, "according to modern decisions, courts of law recognize the assignment of a chose in action so far as to vest an equitable interest in the assignee and authorize him to bring an action in the name of the assignor, and recover a judgment for his own benefit."

Palmer *vs.* Merrill, *supra.*

We contend, therefore, that we have shown that this right or interest in the corporation is a mere chose in action or equitable right vesting in a *cestui que trust*—the corporation being the trustee—and that it is subject to transfer or assignment, as other choses in action are, and of being

made the subject of a trust; that the statute, so often referred to, constitutes such equitable assignment and constitutes the bondholders such equitable assignees; that the railroad company had actual notice (which it admits—see record) of this assignment under the act; that a court of equity has general jurisdiction to administer this fund thus assigned, and to declare and enforce all the rights of the parties, and to deal with and dispose of this fund in all respects so as to secure the rights of the parties therein.

And in a court of equity it is of no consequence whether a certificate was ever issued or not. When it is shown that the right once existed, that court will deal with it to the same extent as if it was a thing capable of actual manual possession. It will command the company to issue the certificate to the rightful owner, when none has been issued (Chester Glass Co. *vs.* Drury, 16 Mass., 94.; Morawitz on Private Corporations, §258, last part, and cases cited, p. 4), and will protect the rights of an assignee under an assignment from being injured by the wrongful act of the trustees (Parrott *vs.* Byers, 40 Cal., 614, 625; Black *vs.* Zacharie, 3 Howard, U. S., 483), and when necessary will compel a transfer of the stock on the books of the corporation, and will compel the corporation to open its books for that purpose.

Hart *vs.* The Bank, 2 Dev. Eq., 111.
Black *vs.* Zacharie, *supra.*
Boston Music Hall Asso. *vs.* Coy, 129 Mass., 435.
Telegraph Co. *vs.* Davenport, 97 U. S., 369.
Mechanics' Bank *vs.* Seton, 1 Peters, 299.
Morehead *vs.* Railroad Co., 96 N. C., 362.

"Thus, too, a transfer of stock will be restrained in favor of the person having the real property in the article."

Osborne *vs.* The Bank, 9 Wheaton, 845.
2 Story Eq. Jur., §§907—955.

It may be urged that the assignor is a necessary party to a suit for this purpose. We admit that the assignor is not an

improper party to such a suit, but deny that he is an indispensable party, without whom no decision can be made. On the contrary, in many of the cases cited he is not a party, and the general principle is that the *cestui que trust* always has a suit against the trustee as to any matter affecting the trust fund, without joining the trustor. Besides, while the State might be a proper party, and would, very probably, have been made a party if the Court had had jurisdiction of a suit against a State, the fact that she could not be sued is a sufficient excuse for not doing so. The rule is stated by this Court in Elmendorf *vs.* Taylor, 10 Wheaton, at pp. 166, 167. Thus—"courts of equity require that all the parties concerned in interest shall be brought before them, that the matter in controversy may be finally settled. This equitable rule, however, is framed by the Court itself, and is subject to its discretion." * * "But if the case may be completely decided as between the litigant parties, the circumstance that an interest exists in some other person whom the process of the Court cannot reach, as if such party be a resident of some other State, ought not to prevent a decree on its merits. It would be a misapplication of the rule to dismiss the plaintiff's bill because he had not done that which the law will not enable him to do." Osborne *vs.* The Bank, 9 Wheaton, 738; Vattier *vs.* Hinde, 7 Peters, 263, 264. Story's Eq. Pleadings, §96, states the rule in the same way.

INTEREST.

The coupons bear interest from the time they became due at the rate allowed by law at the place where they are payable. These are payable in New York, where the rate is seven per cent.

Burroughs *vs.* Commissioners of Richmond County, 65 N. C., 254.

McLendon *vs.* Commissioners, &c., 71 N. C., 38.

Brewster *vs.* Wakefield, 22 Howard, 118.

Mercer County *vs.* Hacket, 1 Wallace, 83.
Gulpeke *vs.* Dubuque, 1 Wallace, 206.
Aurora City *vs.* West, 7 Wallace, 104.
Town *vs.* Woodruff, 92 U. S., 504.
Cromwell *vs.* Co. of Sac, 96 U. S., 62.

JOS. B. BATCHELOR
(OF BATCHELOR & DEVEREUX),
Of Counsel for Appellants.

Supreme Court U. S.
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IN THE

Supreme Court of the United States.

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No. 46.

CHRISTIAN AND ANOTHER

vs.

THE ATLANTIC, &c., RAILROAD CO. AND OTHERS.

Supplementary Brief for Appellants.

PHILLIPS, LAMAR & ZACHRY,
For the Appellants.

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The appellants were plaintiffs below, and filed their bill (July 1, 1883) as holders of bonds of the State of North Carolina, secured by a certain pledge of State stock in the defendant company, in order to obtain (1) an injunction against a *lease* of the railroad then threatened; (2) an application of certain profits to overdue coupons, and (3) satisfaction of the above-mentioned pledge. The effect of the answer and subsequent proceedings has been, practically, to eliminate the two first points. The question of satisfying the pledge is therefore all that remains for consideration.

The two appellants hold bonds and coupons—one, $5,000, of the former (fallen due since this suit was brought)

which have coupons attached that were overdue when this suit was brought, amounting, with interest, at the time of appeal, to more than $6,000; *the other*, $10,000, in such bonds, with more than $9,000, in such coupons.

The defendants besides *the Railroad Company*, are its *President and Directors*, the *Proxy of the State* at meetings of stockholders, and the *State treasurer*.

Inasmuch as no relief in respect of the satisfaction of the pledge is prayed against any defendant except the Railroad Company, this suit at its present stage may be treated as one against that company only, the State proxy and State treasurer being parties only for the purpose of notifying the State of the proceedings.

The present summary will be confined to a view of the contention which is not so much elaborated in the principal brief for the appellants. It will leave other views thereof to their very satisfactory presentation by *Mr. Batchelor*.

An outline of these facts which, according to the above suggestion, are all that now are material, as the same are gathered from the bill and answer together with a stipulation (folio 78) signed by counsel, is as follows:

In 1852 and following years the State of North Carolina chartered the defendant company, and agreed to take stock therein to the amount in all of $1,266,000. In order to raise money for this purpose the statute of February 12, 1855, provided for an issue of "certificates of debt" [*bonds*] by the State; and, section 10, "*That as security for the redemption of said certificates of debt, the public faith of the State of North Carolina is hereby pledged to the holders thereof, and, in addition thereto, all the stock held by the State in the Atlantic and North*

Carolina Railroad Company hereby created shall be pledged for that purpose, and any dividends of profit which may from time to time be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said coupon bonds; but, until said dividends of profits may be declared, it shall be the duty of the treasurer and he is hereby authorized and directed to pay all such interest, as the same may accrue, out of any money in the treasury not otherwise appropriated."

Thereupon previously to and upon the 1st of January, 1856, the company was organized, the State subscription made, and its bonds (in sums of $500 each, with semi-annual coupons attached, aggregating, by additional provisions of law, some $1,266,000) were sold, and certain of these, as above stated, have come *bona fide* into the hands of the appellants. Since the year 1868 the State has refused to pay such coupons.

The precise form of expression contained in the above extract from the North Carolina statute of 12th February, 1855, received the attention of Chief Justice WAITE whilst holding circuit court in North Carolina; and, for reasons which appear to be beyond successful dispute, was by him held to mean that the "interest" therein mentioned was to have the "security" not only of the anticipated "dividends of profit," but also, as being a part of the "certificates of debt," of a *pledge* of the "stock" purchased with proceeds of the latter. (Swasey *v.* N. C. R. Co., 71 N. C. Rep., 571.)

In the clear and animated language which was habitual with him, the Chief Justice said:

"The next objection is that the stock was pledged as security for the payment of the principal of the debt alone

and not the interest, and that as the principal is not yet due there can be no decree for a sale.

"The stock was pledged for the 'redemption of the certificates of debt.' The certificates bound the State 'for the payment of the sum therein mentioned, with interest thereon.' Thus it is apparent that the interest is as much a part of the obligation of the certificate as the principal. If more is necessary to sustain this view, it is to be found in a subsequent part of the section, where it is provided that 'the *principal* of the certificate shall be redeemable,' &c. If it had been supposed that the certificate only related to the principal, it would have been sufficient to provide for the time of the redemption of the certificate, the same as when in sec. 41, 'the security for the redemption of the certificates' was designated and granted.

"If, then, the certificate bind the State for the payment of both principal and interest, it would seem to follow most unquestionably that whatever was given as security for its redemption could be held for the performance of all its obligations.

"But it is argued that the dividends are specially designated as security, and the only security, for the payment of the interest. The language of the act is that the dividends 'shall be applied to the payment of the interest accruing on such certificates.' This is additional security. Without it (as the State could not be sued) there was no power to compel this application. With it there was. The officer in whose custody the dividends were placed was, so long as the fund remained in his hands, amenable to the process of the courts to compel him to do what the law required of him.

"It is again claimed that, as it was made the duty of the treasurer, until dividends were declared, to pay the interest as it accrued out of any moneys in the treasury not otherwise appropriated, it could not have been intended that the stock should be held for anything but the principal. This, too, was additional security. Without it the bondholder had no power to enforce the payment of the interest; with it, after default upon a proper showing, the treasurer could be compelled to apply to unappropriated moneys in his hands to discharge that obligation.

"Neither can an argument in favor of the claim of the defendant be drawn from the fact that the stock is pledged for the redemption of the certificate. It is true the principal

of the certificate was made redeemable at the end of thirty years, and that the interest thereon was payable semi-annually. The certificate could not be redeemed until both principal and interest were paid.

"*Redemption* and *redeemable* are therefore, in this connection, only other names for *payment* and *payable*, and the General Assembly appears to have used the words as though they conveyed the same meaning.

"If the stock were not given in security for the *interest*, then the *faith of the State* was not pledged for its payment; for that, like the stock, was only pledged for the redemption of the *certificate*. So, too, if no payment of interest should be made during the whole thirty years, no part of the stock could be applied to its payment then, even though its value should be sufficient to discharge both principal and interest. If the stock is held at all for the payment of the interest it may be subjected at any time after a semi-annual installment falls due." (Pp. 575–'7.)

It is superfluous to add anything to the above suggestions, except, perhaps, that the special provision made in the section for a satisfaction of the coupons as they should fall due out of the dividends accruing from time to time upon the stock, was no more than an *ex abundanti* recognition by the Legislature of that incident in the law of "Pledge" which gives the pledgee a right to apply to so much of his debt as may be due, all profits, &c., arising from the article pledged. (Androscoggin R. Co. *v.* Auburn Bank, 48 Maine, 335.)

Such a provision, therefore, so far from being the only *security* for payment of the coupons, was indeed *an acknowledgment* that if those *dividends* should fail to be realized, the *interest* would continue to be a charge upon the stock itself.

This brief will therefore attempt to show that the law of *pledge* justifies the prayers of the present bill for relief, even in the absence of the State as a party; and this in the course of the following propositions:

1. The above statutory provision created *proprio vigore* what is known in law as a pledge of the stock, to take effect as soon as that should come into being.

2. Nothing has occurred since the creation of the pledge that substantially affects its character or its consequences.

3. Under the law of "Pledge" it is not necessary to make the pledgor a party to a suit brought to make sale of the thing pledged. In the same way that the pledgee may sell such thing *in pais* upon only giving notice of it to the pledgor; he may also sell through the intervention of a court upon giving only like *notice.*

1. *The above statutory provision created proprio vigore what is known in law as "a pledge" of the stock, to take effect as soon as that should come into being.*

In the first place, such is the conclusion warranted by the employment in the statute of the phrase "shall be *pledged*" in connection with a thing personal. The word "pledged" as applied to personal property is a familiar technical word, and is therefore, by a well-known rule of interpretation, "to be taken in a technical sense, unless it clearly appears from the context or other parts of the instrument that the word was to be applied differently from its legal acceptation." 2 Kent, 462 (marg.)

There is no such context here. In connection with "the public faith of the State" the same word is used just before in a sense which, in connection with "faith," is also common, but different from that where the application is to a thing personal. In the same way the pledge of public faith is also called in this section just as is that of the

stock—*a security*. There, as well, the former use is plainly *declamatory*, and the latter *in the way of business*. The express pledge of *public faith* in that connection was also *superfluous*: for that had been pledged in *previous* parts of the statute—*pledged*, that is, by the very nature of the transaction; whilst the provision for *security* in a *pledge of the stock* makes a real addition of meaning to that of any words preceding; and therefore argues the taking of thought and special care at that point by the Legislature.

In speaking of the "public faith of the State," which, at the time of enactment, was a thing *in existence*, the Legislature uses words *de presenti*—"*is* hereby pledged;" but in regard to a stock yet to be created the phrase is *de futuro*—"*shall be* pledged." But obviously that pledge was to "spring" out of the statute itself *ipso facto* with that creation. Such, it seems, is the meaning of the provision upon its very face. For no agent of the State is appointed to effect such transfer, supposing that this was to be in the future. At the same time the statute (see *Mr. Batchelor's* brief, pp. 2 and 3) is particular in specifying the officers who were to represent the State in the *subscription* for stock, the *signing, countersigning, advertising, issue,* and *registration* of the bonds contemplated by its provisions, viz., "*the board of internal improvement*," "*the public treasurer*," "*the Governor*," and "*the comptroller*." No provision in the meantime is made in the charter or anywhere else in the laws of the State for an agent to *make the pledge*—all the while that it was anticipated by the Legislature that the bonds would be offered and taken before the next biennial session would occur. This is made very plain, not only by a general survey of the enactment, but also, in particular, by a

clause in section 6, viz: "That in case *the present Legislature* shall not provide the necessary and ample means to pay," &c. The true conclusion upon the whole, therefore, is that no other act of *pledge* was designed than that made by this charter itself. Any other was regarded as unnecessary, and was so. Whitney *v.* Morrow, 112 U. S., 693, 695.

The charter, indeed, was a very proper instrument by which to create a pledge of the State stock, supposing any pledge thereof to have been necessary, for a charter is notice of its contents to all persons who deal with the corporation. (2 Morawetz, sec. 591; Pearce *v.* Madison R. Co., 21 How., 443.) No pledge could therefore be more secure, for there could be no transfers of stock to defeat such a pledge, inasmuch as there could be no purchaser of the latter for value *without notice.* Whatever character, by virtue of the charter, upon the creation of the stock, that pledge had, it seems that it must still retain, *unless by consent of all the parties thereto;* for even a statutory alteration thereof with consent of the company would be but an ineffective *impairment* of the contract giving a pledge to the bondholders.

2. *Nothing has occurred since the creation of the pledge that substantially affects its character or its consequences.*

The only circumstance that has occurred since the creation of this pledge to which, as it seems, such an effect can possibly be attributed is the issue of certificates of the stock to the State in 1864 and 1867 (pp. 43, bottom, and 49)—*i. e.*, some nine years after such creation.

It is not necessary to consider what effect such subsequent issue might have had in disturbing a pledge created otherwise than in the present case. In some instances it might possibly have led a court to hold that the previous communication

betwixt the parties was a mere *promise to pledge*, of which the reception and detention of the certificates was a breach. Here, however, as is to be repeated, the State offered the transaction as a "*security*," whilst both parties must be assumed to have known that an *executory* contract for security given by a *non-suable* person is altogether as *insecure* as any possible contract to which it may refer! It must, therefore, be presumed *ut res* (viz., the "*security*") *magis valeat*, &c., that what was so offered and accepted was an engagement which *executed itself* as soon as the subscription was made. If a State engages in commercial transactions, the rules for interpreting communications betwixt *ordinary* parties to such matters must be applied. (United States *v.* State Bank, 96 U. S., 30, 36.)

However, the issue of *certificates* for the stock to the State seems to be entirely immaterial in view of the peculiar character of the instrument by which the pledge was made—*i. e.*, a conveyance by *statutory charter*, and by *public* statute at that—a statute which prescribes important continuous action by the State itself—amongst which are an issue of State bonds, and (in the section before us) payments from the public treasury running through a period of thirty years.

The nature of the thing pledged allowed of course of only *constructive* possession. The ordinary method of creating this sort of possession in pledges of *stock* is by assignments of *certificates*. But this is not by virtue of any provision of *positive* law; one which therefore might exclude other methods that in point of general reason would be *equivalents* therefor; *assignments of choses in action, perfected by notice*, being held in equity generally to effect a constructive delivery to the assignee of the property therein

involved (Adams' Eq., 53). And amongst possible equivalents what could be so more completely than a pledge contained in the very charter of the company: an assignment therefore notified not only to the company itself, but to all persons who should deal with it, and so one out of the reach of any by-law, and which necessarily excludes all fears on behalf of *innocent* third persons. It is not suggested here that rights of third persons have in fact intervened; but in considering the character of a conveyance as effective or not, possibilities are to be reckoned upon; and, doing this, it seems that there can be no circumstance of either *publicity*, or *assurance*, or *regard for third persons*, attending upon a pledge by transfer of certificates which does not equally attend upon a transfer by statutory charter. (See 2 Kent, 577, marg. note *b.*) It is elementary learning that in times when private men could convey possession of freeholds only by *livery of seizin*, the sovereign could do so by means of conveyance by statute; or even by intervening in its courts to sanction a common recovery. The effect, therefore, of this pledge by charter was one beyond any power in the State and the company, although acting in concert, to disturb by a subsequent issue of the certificates. For the face of the latter when read in context as was necessary, *with the charter*, could not have the full meaning of instruments of that class. They evidence, indeed, a right in the State to take a stockholder's part in governing the corporation, but this is true as well even of such pledgors of stock as have transferred their certificates to the pledgees. And even where constructive possession created by transfer of *certificates* has been followed up by a transfer upon the company's books of the stock itself to the pledgee, the latter, so long as only

pledgee, has ordinarily no power to interfere in the control of company business.

Upon the whole, therefore, the issue of these certificates in 1864, &c., did not disturb the *constructive possession* of the pledgee; and so it appears that since the creation of the pledge nothing has occurred substantially to change its original character.

3. *Under the law of "Pledge" it is not necessary to make the pledgor a party to a suit brought to make sale of the thing pledged. In the same way that the pledgee may sell such thing* IN PAIS *upon only giving notice of it to the pledgor, he may also sell it through the intervention of a court upon giving only like* NOTICE.

It is familiar doctrine that a pledge confers by implication upon the pledgee an authority to sell the thing pledged so soon as the debt or any part of it shall become due. (3 Pomeroy, Eq., 1231; 5 Waite, Actions, &c., 576, &c.) Inasmuch as the pledgee is *in possession* of the thing, this authority is one which, in general, is easily executed. This is plain to every one in cases where the possession is *actual;* and in view of the law it is not otherwise, even where the possession is only *constructive.* The pledgee may not only assign his interest in the pledge, thus substituting the assignee to his place or pledge, but he may also by sale after notice to the pledgor convey the thing itself to a purchaser.

Instead of such a sale he may also resort to a court to have a foreclosure or a judicial sale. For an ordinary *foreclosure,* it would probably be necessary to make the pledgor *a party.* But this would not be necessary, as it seems, in order to confer *jurisdiction* upon a court to sell a thing which the pledgee might himself have sold, but the sale of which he submits to a court because of collateral matters connected

therewith, viz., because a large number of pledgees in like case are concerned, and because it is convenient to bring the stock to sale under circumstances which will satisfy purchasers that the railroad company (which is under the control of the pledgor, two-thirds of its directors being appointees of the latter) will be bound by the sale. Such a sale is one administered, rather than authorized, by the court. The pledgee comes into court to have a public ascertainment of the regularity of his proceedings in making a sale of which by law he is *dominus;* or, in certain other cases, for collateral reasons, rather than to obtain *power to sell.*

In section 1008 of his Commentaries upon Equity Jurisprudence, Story alludes to certain doctrines of the civil law about *pledge.* After telling the readers that if the debt were not paid at the stipulated time that law clothed the creditor with power, after proper notice to the debtor, to sell the pledge and reimburse himself, he adds, "When the debtor could not be found, and notice could not be given to him, such a decretal order (*i. e.*, of some court upon application by the creditor) seems to have been necessary."

This passage is quoted in text books and in opinions of courts as stating that which also is law in the United States. Jones on Pledges, sec. 640; Stearns *v.* Marsh, 4 Denio, 227 (47 Am. Dec., 248); Wheeler *v.* Newbould, 16 N. Y., 392; Indiana R. Co. *v.* McKernan, 24 Ind., 62; and see also, for like doctrine, Robinson *v.* Hurley, 11 Iowa, 410, and note (79 Am. Dec., 497), and Lucketts *v.* Townsend, 3 Texas, 119 (49 Am. Dec., 723, and note).

The necessity for applying to a court in the present case does not indeed arise from an inability to serve notice of sale

upon the pledgor, but is based upon other grounds. The above principle is quoted here only to show that to obtain a decree in the present case it is not important to make the pledgor *a party*, so as to force it *in invitum* to submit to a sale. The pledgee did not need the aid of the court for that purpose. He could have sold without it. But that which is necessary here is only that the pledgor should have *notice* of the time and place of the sale.

For that it is submitted that (1) either the notice given to the Treasurer of the State, by making him a party, is, for all purposes of the law of Pledge, notice to the State itself, and (2) that if this be otherwise, then that notice *viis et modis*, given to the State by order contained in the decree, of the time and place of any sale that may be decreed, is all that the law requires. The XIth Amendment is thereby preserved intact, at the same time that justice is not defeated in the important matter set forth in the bill.

The defendants, including the Treasurer of the State, admit that the latter owes to the plaintiffs, severally, for overdue and unpaid coupons (1) four thousand dollars and more, and (2) nine thousand dollars (*interest* thereupon being a matter of *law* in North Carolina). Whilst it may be true, then, that the State may not be bound by such amounts, but may come in upon the notice which it will receive, and thereupon acquit itself in part or all, yet by the law the pledgee has a *prima facie* right, as against it, to sell and to appropriate the proceeds, subject to such an account. Meanwhile the defendants are bound by their admission—which is besides an admission of what is a very plain fact.

No case has been found in which these principles have been so applied or in which it has been necessary to assert

them. The XIth amendment has rendered it important for these complainants to scrutinize the law of pledge, and they now submit the above suggestions to the judgment of the court. They feel confident that there is nothing in the nature of their case to prevent a court of equity from according to them all the relief of which any such case can admit, and that it will be for no light or subordinate reason that a State will be allowed to swoop down upon what is virtually a proceeding *in rem*, and bear aloft the object of contest in its *sovereign* talons beyond the range of *justice*.

PHILLIPS, LAMAR & ZACHRY,

For the Appellants.

S. F. Phillips
W. H. Lamar
J. G. Zachry
For Appellants

EDWARDS & BROUGHTON, Printers and Binders, Raleigh.

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BRIEF FOR APPELLANTS IN REPLY.

In the able brief of counsel for appellees, three points are presented and debated:

1. Did the act of the General Assembly referred to (Laws of 1854–'55, ch. 232) give any lien to the bondholders?

2. Did this lien extend to the coupons as well as to the bonds?

3. Is the State an *indispensable* party to this suit?

1. *As to the lien.* This is so fully and ably discussed in the brief of Messrs. Phillips, Lamar & Zachry, that no argument will be made here. Only a few additional authorities will be cited.

In *Winslow* v. *Mitchell*, 2 Story, 630, Judge Story says, at page 644: "That whenever the parties, by their contract, intended to create a positive lien or charge, either upon real or personal property, whether then owned by the assignor or contractor or not; or, if personal property,

whether it is then in being or not, it attaches in equity as a lien or charge upon the particular property as soon as the assignor or contractor acquired a title thereto, against the latter, and all persons asserting a claim thereto, under him, either voluntarily or with notice or bankruptcy."

A railroad company can mortgage rolling stock not yet acquired. *Pennock* v. *Coe*, 23 Howard, 130; *Durham* v. *Railway Co.*, 1 Wallace, 254.

The same principle applies to a crop to be gathered from seed not yet planted. *Butt* v. *Ellett*, 19 Wallace, 544; *Cotton* v. *Willoughby*, 83 N. C., 75; and to the next colt of a brood mare, or the next clip of a flock of sheep, or the next crop of hay from a meadow. *Fonville* v. *Casey*, 1 Murphy (N. C.), 346.

It is a well settled principle that whatever is agreed to be done is, in equity, considered as done.

2. *Is there a lien on the stock for the payment of the coupons?* The opinion of the late Chief Justice in the *Swasey* suit, so often referred to, leaves nothing further to be said on this point.

(On page 13 of brief for appellees, it is stated that plaintiffs claim a lien on 12,666 shares of the stock. This is a mistake on one side or the other. The plaintiffs claim a lien only on the 10,666 shares of stock issued under act of 1854-'55. The other 2,000 shares were acquired in a different way, and for another consideration, and have nothing to do with this case.)

3. *Is the State an indispensable party?* This point is discussed in the brief for appellants, and the argument will not be repeated here. We ask, however, to call the attention of the Court to a few authorities, and to make a few suggestions in reply.

Parties are divided into three classes—formal parties, parties having an interest in the controversy, and who are therefore styled necessary and proper parties, and thirdly, indispensable parties. The plaintiffs contend that this case

presents an instance of the second class. Parties merely formal may always be dispensed with, whether with or without cause.

Necessary parties may be dispensed with for several causes. When parties who are interested in the controversy are non-residents of the district where the suit is brought, and cannot therefore be reached by the process of the Court, or where they are interested in the controversy, and cannot be made parties because residing in the same district with the defendant, and if brought in it would defeat the jurisdiction of the Court, the Court will dispense with such parties, and decide the case as between the parties litigant. *Elmendorf* v. *Taylor*, 10 Wheaton, 167 (before cited); *Cameron* v. *McRoberts*, 3 Wheaton, 593; *Hogan* v. *Walker*, 14 How., 36.

In *Payne* v. *Hook*, 7 Wallace, at 431, the Court says: "It is undoubtedly true that all persons materially interested in the subject-matter of the suit should be made parties to it; but this rule, like all general rules, being founded in convenience, will yield, whenever it should yield, in order to accomplish the ends of justice." * * * "The necessity for the relaxation of the rule is especially apparent in the courts of the United States, where, oftentimes, the enforcement of the rule would oust them of their jurisdiction, and deprive parties, entitled to the interposition of a court of equity, of any remedy whatever." "The complainant sues as one of the next of kin and names the other distributees, who have the same common interest, without stating of what particular State they are citizens. It is fair to presume, in the absence of any averments to the contrary, that they are citizens of Missouri. If so, they could not be joined as plaintiffs, for that would take away the jurisdiction of the Court." "A court of equity adapts its decrees to the necessities of each case, and should the present suit terminate in a decree against the defendants, it is easy to do substantial justice to all the parties in interest, and prevent

a multiplicity of suits, by allowing the other distributees, either through a reference to a master, or by some other proper proceeding, to come in and share the benefit of the litigation."

In *Story* v. *Livingston*, 14 Peters, at p. 376, the Court says: "In *Mallow* v. *Hinde*, 12 Wheat., 193, it was ruled that, whenever the case may be completely decided as between the litigant parties, an interest existing in some other person, whom the process of the Court cannot reach, as if such person be a resident of another State, will not prevent a decree upon the merits. And, in the same case, it was decided that, when an equity cause can be finally decided as between the parties litigant, without bringing others before the Court who would, generally speaking, be necessary parties, such parties may be dispensed with in the Circuit Court, if its process cannot reach them, as if they are citizens of another State."

In *Hern* v. *Lockhart*, 17 Wallace, at p 579, two of the defendants being residents of the same State with the complainants, the suit was dismissed as to them, and the objection to the jurisdiction of the Court thus obviated.

The act of Congress of 1839, *Rev. Statutes*, § 737, and rule 47, adopted in pursuance thereof, was passed in furtherance of the jurisdiction of the Court as thus exercised, and the later act of 1875, 3d March, 18th Statutes, § 8, p. 470, being *Revised Statutes*, § 738, amended and re-enacted, goes much further in the same direction.

In *Hagood* v. *Southern*, 117 U. S., 52, many of the leading cases are referred to, the Court, on page 70, quoting from *Cunningham* v. *Railroad*: "In these cases he is not sued as or because he is an officer of the government, but as an individual, and the Court is not ousted of jurisdiction because he asserts authority as such officer. To make out his defence, he must show that his authority was sufficient to protect him." P. 452.

In the case before the Court, the defendant company was

not sued as an officer of the government; the company never was such officer. It was sued as a person, and the relief asked against it was in its character of a person, and it could not allege any authority from the State, because the State had never attempted to give it any authority, and could not have done so if it had tried. The relief which the plaintiffs seek against it is, that the statutory pledge of the stock made by the act of the legislature, to which the company was a party, shall be perfected as between the parties now before this Court, so far as this can be done, and although the State may claim a *secondary and ultimate* interest in this stock, it is not an indispensable party to an action seeking this relief as between the bondholders and the company; and if this relief is granted, the position of the State will not be changed one particle. It will still hold, and can assert any right which it now holds and can assert.

It is immaterial to the company who owns its stock, and when a party shows a legal or equitable right to it, the company can be compelled to recognize that right. For this, many cases in courts of highest authority, including one from North Carolina (*Hart* v. *The Bank*, 2 Dev. Eq., 111), were cited in the brief. And, in this connection, we submit that the learned counsel for the appellees, on the last page of his brief (page 16), admits all that plaintiffs contend for. He says:

"If they were the pledgees of the stock for an admitted debt, there might be some show of reason for their contention that they could take the property pledged into Court and ask its sale for the payment of the admitted debt."

Now how stands the case? It is admitted that plaintiffs are the *bona fide* holders, owners, and purchasers for value, of the bonds on which this suit is brought, amounting to $15,000, with coupons attached amounting to $13,000. (See printed record, page 46.)

For the purpose of the argument of the question of parties, the lien or pledge must be admitted. Therefore it fol-

Speaking of the lien, it is held that: "It may be enforced by a proceeding *in rem.* when the process of the Court can be enforced without disturbing the possession of the Government, which, being thus compelled to appear in the Court to assert its claim, must discharge the lien before the property will be delivered."

We submit that the State is not an indispensable party, without whose presence in court no relief can be granted. On the contrary, it can grant all the relief which we claim, to which the only objection is the purely technical one that the State cannot be sued, and is unwilling to do justice herself, or to let the railroad do the plaintiffs justice. But if, for this reason, full justice cannot be done the plaintiffs, they certainly make a case entitling them to some relief. The Court can perfect the pledge as between the railroad company and the bondholders, and can appoint a receiver to take and hold the certificate of stock as evidence, and for the preservation of their rights; it can grant an injunction restraining the company and its officers from making any transfer of the stock on the books of the company, and the State officers from in any way disposing of the certificate of stock which was improperly issued, as stated in the pleadings.

We submit, that in the cases of *United States* v. *Peters*, *Osborne* v. *The Bank*, *United States* v. *Lee*, *Board of Liquidation* v. *McComb*, and *Davis* v. *Gray*, the Court exercised a jurisdiction greater than that claimed in this suit, and if these are sustained, our contention must be sustained.

JOS. B. BATCHELOR,
(*Of Batchelor & Devereux*) *of Counsel for Plaintiffs.*

BRIEF FOR APPELLEES.

Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 46.

WILLIAM E CHRISTIAN, *et al.*, *Appellants*,

vs.

THE ATLANTIC AND NORTH CAROLINA RAILROAD CO. *et al.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

R. H. BATTLE,
(of Battle & Mordecai),
Solicitor for Appellees.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

WM. E. CHRISTIAN AND OTHERS, APPELLANTS,

VS.

THE ATLANTIC AND NORTH CAROLINA RAIL-ROAD COMPANY AND OTHERS.

BRIEF FOR APPELLEES.

STATEMENT OF FACTS, &c.

This suit in equity in the Circuit Court for the Eastern District of North Carolina is a creditor's bill, and was begun by the filing of the bill, July 21st, 1883. It was brought for the double purpose—first, of having certain bonds, or certificates of debt, issued by the State of North Carolina in aid of the defendant corporation, declared to be a lien upon the stock owned by the State in said corporation, and any dividends of profit that might be declared thereon, and for a sale of said stock, or so much of it as might be necessary, to pay the past-due coupons on said bonds, and for an account and a receiver, as incidental to such relief; and, second, to prevent by injunction the defendant corporation, its officers and Directors, from making a lease of its road and other property, as it is alleged was threatened to be done. The second ground of complaint was abandoned, and this cause is here by appeal of the plaintiffs from a decree of the Court below, at June Term, 1885, dismissing the bill with costs.

The plaintiffs' solicitor, Mr. Batchelor, in his brief, assigns

four errors in the decree; but it will be observed that the decree is simply, "that the plaintiff is not entitled to the relief sought in this bill and that said bill be dismissed, and that the defendants recover of the plaintiff and the surety for prosecution their costs," &c. (Page 50 of printed record.) If, therefore, for any reason, the plaintiffs are not entitled to have their coupons and bonds declared a lien on said stock and for a sale of the stock, the decree will be sustained.

It will be observed that the bonds held by the plaintiffs had not matured when the suit was begun and the decree rendered, and that the recovery of the money due *on the coupons* was what is sought. The bonds were dated January, 1856, and matured January 1st, 1886. So that the plaintiffs can take no advantage of the fact that the bonds have now matured.

It is not alleged in the bill, that any dividends had been received or declared on the stock of the defendant corporation; but it appears from the pleadings and proofs that the corporation was poor and in debt—the par value of its capital stock was only $1,600,000 (par. V of Bill, page 3 of record), and its debts over $230,000 (page 30), and that $40.000 *per annum* was deemed a fair rental value for its road and other property, one corporation having paid that sum one year, and another, which agreed to pay that sum next year, July, 1882, having failed to comply with the terms and forfeited the lease (par. XV and XVI of Bill, page 6.) This sum would leave very little to apply to the principal, after paying the interest on the bonded and judgment debt against the corporation, and defraying expenses incident to keeping up its organization, to say nothing of the natural wear and decay of buildings and other property, for which the corporation would have to provide. So, not only were no dividends declared on the stock of the defendant corporation, but the pleadings and proofs show that none could be properly and

honestly declared for an indefinite period. There was, therefore, no such basis for a suit by the holders of the State bonds issued to aid in the construction of the road as there was in the case of *Swasey* v. *The North Carolina Railroad Co. and others*, which was brought by like bondholders of the State of North Carolina, to arrest dividends on stock owned by the State in the North Carolina Railroad Co., *actually declared*, before they were paid by the company to the State Treasurer, as appears by reference to *the facts* of that case as reported in 23 Wall, page 405—where the appeal was dismissed because taken from a decree not final. It is true that the Circuit Court, having originally asserted its jurisdiction for that purpose, and given the plaintiff partial relief by injunction and appointment of a receiver, etc., did, by the decree appealed from, adjudge that the plaintiffs' lien could be enforced by a sale of a proportionate part of the State's stock, for payment of past-due coupons, and appoint a commissioner to take an account and report what proportion of the stock was applicable to the plaintiffs' coupons. This decree was rendered by the late Chief Justice of this Court and Judge BOND of the Fourth Judicial Circuit, and we admit the great weight of the authority the decision of such a Bench affords. The opinion delivered by WAITE, C. J., is reported in the Appendix of 71st N. C. Reps. at page 571, and in 1st Hughes' C. C. Reps., 71. It is worthy of note, however, in view of the importance to be attached to that case as authority, that the Circuit Judge who aided in making that decree, signed the decree against the plaintiffs in our case. He must have been satisfied, either that there was error in the decision of *Swasey's* case, or that there is a substantial difference between that case and ours.

ARGUMENT.

The defendants contend:

First. That the stock is the property of the State, and a lien upon it cannot be enforced or declared without making the State a party; and the State is not liable to suit.

Attention is called to the wording of the act (sec. 10, ch. 232 of the Laws of N. C., 1854–'55) under which the suit is brought. It reads:

"*Be it further enacted*, that as security for the redemption of said certificates of debt the public faith of the State of North Carolina is hereby pledged to the holders thereof, and in addition thereto all the stock held by the State in the Atlantic and North Carolina Railroad Company hereby created *shall be pledged* for that purpose, and any dividend of profit, which may from time to time be declared on the stock held by the State as aforesaid, shall be applied to the payment of the interest accruing on said coupon bonds; but until such dividends of profit may be declared, it shall be the duty of the Treasurer, and he is hereby authorized and directed, to pay all such interest as may accrue out of any moneys in the treasury not otherwise appropriated."

Do the words, "shall be pledged," import a present pledge or mortgage, or a contract to *pledge* or mortgage the State's stock?

(1.) "A written transfer, which shall pass the legal title, is essential in the pledge of stock." * * * "There must be a transfer on the books of the company, or a power of attorney authorizing a transfer, or some assignment or contract in writing by which the holder may assert title and compel a transfer when desired. A *delivery* of the thing pledged is necessary to constitute a pledge; and a delivery of a certificate of stock, without a transfer or a writing which will enable the holder to make a transfer of the stock to his own

name, is not a complete delivery; it does not place the stock in the full control of the pledge."

Jones on Pledges, sec. 152, and cases cited in the notes.

If the State's stock has been pledged by the act, it is of course as collateral security.

After the debt falls due (in such case) the pledgee has his election to pursue one of three courses: First, to proceed personally against the pledgor for his debt without selling the collateral security; or second, to file a bill in chancery and have a judicial sale under a regular decree for foreclosure; or third, to sell without judicial process, upon giving reasonable notice to the debtor to redeem.

Robinson v. *Hurley*, 11 Iowa, 410.
Jones on Pledges, sec. 720.
2 Kent's Com. (12th ed.), 582.
Kemp v. *Westbrook*, 1 Vesey, 278.
Vanderzee v. *Willis*, 3 Bro. C. C., 21.

If the words of the act import a pledge *in presenti* of the State's stock, to secure the redemption of the State's bonds, a bill in chancery for foreclosure is the only one of the three courses laid down open for the bondholders. They cannot sue the State for the amount of their coupons, and they are not in condition to advertise and sell the stock *in pais*, for want of possession of it. Then, being obliged to resort to a court of equity for a foreclosure, who are the necessary parties? The difference between a mortgage and pledge of personal property being that a mortgage vests in the mortgagee the legal title, while the pledgee has, by the pledge, the possession with a special property in the thing pledged (Jones on Pledges, sec. 151), the parties must be the same in a bill to foreclose a mortgage and one to foreclose a pledge.

"The form of the bill and the mode of proceeding is sub-

stantially the same, whether the subject-matter of the mortgage be personal property or real estate."

Jones on Chat. Mortgages, sec. 776.

"The mortgagor and every other person having an interest in the mortgaged property should be made defendants to the bill, so that their claims and equities in the property may be cut off."

Jones on Ch. Mort., 783.
2 Jones on Mortgages, sec. 1368.
Greither v. *Alexander*, 15 Iowa, 470.

"In respect to defendants in foreclosure suits they are either *proper* or *necessary* parties. A necessary party is one whose presence before the Court is indispensable to the rendering a judgment which shall have any effect upon the property, without whom the Court might properly refuse to proceed, because its decree would be practically nugatory. The person who is, in this sense, a necessary party defendant, is the owner of the equity of redemption."

2 Jones on Mort., 1394.
Terrell v. *Allison*, 21 Wall., 289.

(Even a mortgagor who has sold his equity of redemption with warranty is a necessary party.

Robertson v. *Carson*, 19 Wall., 94.)

"There are three classes of parties to a bill in equity: 1. Formal parties. 2. Persons having an interest in the controversy, and who ought to be made parties in order that the Court may act on that rule which requires it to decide on, and finally determine the entire controversy and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the Court, so that the Court can proceed to a decree, and do complete and final justice without affecting other

persons not before the Court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience."

Shields v. *Barrow*, 17 How., 130 (at p. 139).
Russell v. *Clark's Ex'rs.*, 7 Cranch, 98.

"All whose interests will be affected by the decree sought to be obtained must be before the Court, and if any such persons cannot be reached by process, do not voluntarily appear, or, from a jurisdictional objection going to the person in the Courts of the United States, cannot be made parties, the bill must be dismissed."

Ripon v. *Railroad Companies*, 16 Wall., 446.
Bank v. *Carrollton Railroad*, 11 Wall., 624.

When the disposal of a fund is involved and it is liable to be wholly swept away, a claimant of the fund is an indispensable party.

Williams v. *Bankhead*, 19 Wall., 563.
Robertson v. *Carson*, *ibid.*, 94.

In *Williams* v. *Bankhead*, Justice BRADLEY, discussing the qualification of the rule as to parties, lays down, for the Court, this as *established:* "When a person will be directly affected by a decree, he is an indispensable party, unless the parties are too numerous to be brought before the Court, when the case is subject to a special rule."

19 Wall., at p. 571.

The doctrine, that in all cases where jurisdiction depends upon the party, it is the party named in the record, enunciated in *Osborn* v. *Bank of the United States*, 9 Wheat., 738, 857, and on which plaintiffs' counsel so much rely, has

been modified by recent decisions, in which the whole subject has been so elaborately argued and fully considered. Now—

"It must be regarded as a settled doctrine of this Court, established by its recent decisions 'that the question whether a suit is within the prohibition of the 11th amendment is not always determined by reference to the nominal parties on the record.'

Poindexter v. *Greenhow*, 114 U. S., 270, 287,"
In re Ayres, 123 U. S., 443, 487.

"To secure the manifest purposes of the 11th amendment, requires that it should be interpreted, not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit, it must be held to cover not only suits brought against the State by name, but those also against its officers, agents and representatives, where the State, though not named as such, is, nevertheless, the only real party against which the relief is asked, and against which the judgment or decree effectively operates."

In re Ayres, supra, pp. 506 and 507.

Whenever it appears that a State is an indispensable party, to enable the Court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction of the suit.

Cunningham v. *Macon and Bruns. R. R. Co.*, 109 U. S., 446.
Hagood v. *Southern*, 117 U. S., 52.
In re Ayres, supra.

Our case does not come within the exception mentioned in Cunningham's case in respect to property of the State, or in which a State has an interest, coming before the Court and under its control in the regular course of judicial administration.

Two of the three cases, cited as instances of this exception, are proceedings *in rem*—*The Siren*, 7 Wall., 152, and *The Davis*, 10 Wall., 15; the former to enforce a claim for damages for a collision on the sea, and the latter a lien for services in the salvage of goods. The other case cited, *Clark* v. *Barnard*, 108 U. S., 436, was a bill in equity, filed to restrain the treasurer of a State from collecting a certificate of indebtedness issued by a city and deposited as collateral to secure a bond with a penalty to the State; but the certificate having been collected and the money paid into the registry of the Court, and the State having voluntarily endeavored to claim the money, it was held to be subject thereby to any proper decree of the Court, and to have waived the objection raised by a demurrer, that the State was the real party in interest. In the bill it was alleged that Clark, the State's treasurer, held the certificate wrongfully, in his *individual* and not in his *official* capacity.

In *The Siren* the Court assumed jurisdiction because the government was the actor or party plaintiff in the condemnation proceedings in which the fund was realized; and in *The Davis* because the goods were not in the possession of any officer of the government.

Admitting, for argument, that the authorities cited by plaintiffs' counsel establish that the possession of certificates of stock in a corporation is not necessary to make one who had paid for the stock its owner, and, supposing that the certificates for the State's stock had not been issued, what do the plaintiffs ask the Court to do? 1. To establish a debt against an alleged debtor, without making him a party, so that he might, under proper pleas, show that the debt was never due, or had been paid, &c. 2. Assuming that the alleged debt is justly due, to take the property of the debtor and sell it, and dispose of the proceeds without making the debtor a party and giving him an opportunity of saying how much of his property shall be sold, and how, and upon what terms. 3. That creditors shall come in and

prove bonds and coupons—in such manner as a commissioner or special master may think proper—in the absence of the debtor, without inviting him to be present; for a *summons*, at law, and a *subpœna* in equity, are the only methods of inviting one's presence before the Court.

Surely it would be a legal anomaly to have bonds, to the amount of hundreds of thousands of dollars, and coupons detached, or attached, of nearly equal amount, in the hands of an indefinite number of persons, and some of them possibly debtors of the State, proved, and judgment rendered against the State for the amount of the coupons, maybe with interest upon them, and the State's property taken and sold to pay the judgment, without its having an opportunity to contest the validity or the amount of the bonds, or suggesting how much, and how its property shall be sold.

The defendants contend:

Second. That the stock of the State in the defendant corporation was not pledged by the section 10 of the charter, but the words import a contract to pledge said stock in the future.

The language is, "that as a security for the redemption of said certificates of debt the public faith of the State of North Carolina *is hereby pledged* to the holders thereof, and in addition thereto all the stock held by the State in the Atlantic and North Carolina Railroad Company hereby created, *shall be pledged* for that purpose," &c. The *tense* is changed from the *present* to the *future*. The pledging was an act to be done in the future, by further legislation or otherwise, by selecting a pledgee to take and hold the certificate of stock, &c.

In Swasey's case the language of the charter was different in that particular, and reads: "All the stock held by the State in the North Carolina Railroad Company, hereby created, *shall be* and *the same is hereby pledged*," &c.—purporting to make a *present* pledge. Otherwise, the sections

are the same. Why the difference in phraseology, if the same thing was intended in each?

If there is a contract to pledge, of course a bill for specific performance would not lie, because the owner, who is to pledge, is the State of North Carolina.

Levey v. *Stockslager*, 129 U. S., 470.
Hagood v. *Southern*, 117 U. S., 52 (67).
In re Ayres, supra.

Defendants contend:

Third. That it was not the intent of the charter (sec. 10) to appropriate, then or in the future, the State's stock for payment of the coupons on the bonds.

By the terms of the section the stock was to be pledged "for the redemption of the said certificate of debt," and "any dividend of profits which may from time to time be declared on the stock held by the State shall be applied to the payment of the interest accruing on said coupon bonds." And, in the absence of dividends, the State Treasurer was to pay out of money in the treasury. Interest is but an incident or accessory to a debt, and here a mode is provided for the payment of the interest, and a pledge is provided for the redemption of the debt, to-wit, the principal of the debt. It is a matter of common learning that the maxim, "*Verba accipiuntur contra proferentem*," does not apply to the sovereign, and he is held to grant only what he plainly intended to grant. It, plainly, was never intended that the stock was to be sold for the payment of the interest, which, being represented by coupons—negotiable securities—might be in different hands from the bonds, and leave the bonds unprovided for.

A Court of Equity is careful to make no order or decree, the effect of which must be confusion and injury to innocent parties. And if it be admitted that, if the bonds had been due when this suit was brought and the decree rendered, it would have been proper to declare a lien and order a sale of the stock to pay the holders of bonds and coupons,

this suit was premature, and the Court would say to the plaintiffs, if the objection, that the State is an indispensable party to *any* suit to subject the stock, should not be held conclusive: You ought to have waited until you could ask a foreclosure, for the redemption of the bonds, according to the terms of the law under which you seek relief.

Defendants contend:

Fourth. That the possession by the State, through its public Treasurer, of the certificates of stock (p. 49 of record) makes this case different from Swasey's, where the certificates were never issued, and renders it the more *indispensable* (if there be degrees to that term) that the State should be a party, as owner, to any proceeding designed to subject it to a sale.

A certificate of stock is the appropriate evidence of ownership of the amount of stock represented by it, and when issued the holder alone can be recognized as the owner; and if he would assign it so as to deliver the stock, he must do so in a writing which should accompany the certificate.

Jones on Pledges, sec. 152.

And it is almost the universal rule of corporations not to recognize any one as owner of stock whose name does not appear on their *stock books* as such, and upon sale or assignment of his stock his vendee or assignee is required to produce and surrender the certificate issued to his bargainor or assignor, in order that his name may be entered on the stock books and a new certificate issued to him. Hence the State is not only the owner of the stock claimed to be pledged, but it holds the evidence of it, without the surrender of which no one else can be recognized as the owner, in its place. How can the State be deprived of this property in the stock of the defendant corporation, of which it thus holds the muniment of its title, without being a necessary party to a suit for that purpose?

For some reason, doubtless inadvertence, the certificate

for the State's original 10,666 shares of stock was not called for until July, 1864. Two thousand more shares were subscribed for in the name of the State, under an act of Assembly ratified March 2, 1867, and the certificate for them was delivered July 24th, 1867. (See Public Laws of North Carolina, 1866-'67, chap. 84, p. 126.) The suggestion of fraud in the issue of the first certificate is without adequate foundation. Fraud is not charged in the bill, as it should have been if any reliance is placed on it. It does not appear, and it is not charged, that in July, 1864, the State was harrassed by her creditors, the holders of the bonds of the character of those of the plaintiffs. And, besides, *the King* (the Sovereign, the State) can do no wrong.

It will be observed, that the plaintiffs ask the Court to declare a lien upon all the State's 12,666 shares of stock, while it appears from the act of 1867, above referred to, that 2,000 of its shares were not in contemplation at all when the alleged pledge was made, but owed their existence to the act of 1867, which provided for no pledge, present or future.

Whether, then, there was a *present* pledge of the State's 10,666 shares of stock in the defendant corporation, thereafter to be subscribed for under the charter of 1855, or a promise of a *future* pledge, to be construed as a binding contract, or whether the delivery of the certificate for those shares in July, 1864, was void and nugatory, or not, we insist that it is here sought, directly, to take from the State its property and apply it to the payment of its debts, and that the State is an indispensable party to suit brought for that purpose. Under the eleventh amendment to the Constitution the State has the same exemption from suit by citizens of other States in United States Courts as the government of the United States has, and the exemption extends to its property. Justice FIELD, speaking for the Court, in *The Siren*, 7 Wall., at p. 154, after mentioning the reasons of public policy which exempts the sovereign from being sued in his own Courts, without his consent, says:

"The exemption from direct suit is, therefore, without exception;" and adds: "The same exemption from judicial process extends to the property of the United States, and for the same reasons, as justly observed by the learned judge who tried this case: there is no distinction between suits against the government directly and suits against its property;" and at pages 157 and 158:

"Even when claims are made liens upon property, by statute, they cannot be enforced by direct suit, if the property subsequently vest in the government. Thus, in Massachusetts, the statutes provide, that any person to whom money is due for labor and materials furnished in the construction of a vessel in that Commonwealth shall have a lien upon her, which shall be preferred to all other liens, except mariners' wages, and shall continue until the debt is paid, unless lost by a failure to comply with certain specified conditions. Yet, in a recent case, where a vessel, subject to a lien of this character, was transferred to the United States, it was held that the lien could not be enforced in the Courts of that State. The decision was placed upon the general exemption of the government and its property from legal process." Citing—

Briggs v. *Light Boats*, 11 Allen, 157.

"So also, express contract liens upon the property of the United States are incapable of enforcement. A mortgage upon property, the title to which had subsequently passed to the United States, would be in the same position as a claim against a vessel of the government—incapable of enforcement by legal proceedings. The United States, possessing the fee, would be an indispensable party to a suit to foreclose the equity of redemption or to obtain a sale of the premises. In *Lutwich* v. *The Attorney General*, a case cited by Lord HARDWICKE in deciding *Reeve* v. *Attorney General*, 2 Atkyns, 223, a bill was filed to foreclose a mortgage after the mortgagor had been attainted for high treason, and the

Court refused a foreclosure against the Crown, but directed that the mortgagee should hold and enjoy the mortgaged premises until the Crown thought proper to redeem the estate."

The opinion proceeds to cite, with approval, *Hodge* v. *Attorney General*, 3 Younge & Collyer, 342, in which one Bailey, afterwards convicted of a felony, had, by way of equitable mortgage, deposited certain title deeds with the plaintiff to secure a debt. The estates represented by the deeds having escheated to the Crown, the plaintiff bringing a bill against the Attorney General to foreclose, the Court refused to decree a sale, and Baron ALDERSON, in giving the decision, said: "I do not think that I have any jurisdiction in this case to order a sale. Here the legal estate is vested in the Crown; and I do not know any process by which this Court can compel the Crown to convey that legal estate"; and, in the concluding paragraph, on page 157, the opinion proceeds: "The authorities to which we have referred are sufficient to show that the existence of a claim, *and even of a lien upon property, is not always dependent upon the ability of the holder to enforce it by legal proceedings*," &c.

In reference to the case of *Hodge* v. *Attorney General*, we call attention to the principle established in England and in the States in which equitable mortgage, by deposit of title deeds, is recognized as a security, that the security can be made available by *foreclosure*, like an ordinary deed of mortgage.

Adams' Equity, star, p. 125.

The opinion in *The Siren*, upon the points stated above, seems to have had the unanimous approval of the whole Court; for while one of the Justices filed a dissenting opinion, the dissent was upon the ground that the government had not brought the *res* within the jurisdiction of the Court, and the principles stated in the opinion of the Court should put an end to the proceeding.

Taking these principles as settled law, it seems to us impossible for the plaintiffs to maintain their suit. If they were the pledgees of the stock for an admitted debt, there might be some show of reason in their contention, that they could take the property pledged into court and ask its sale for the payment of the admitted debt; but here they allege and claim that the property is in the possession of the railroad company as a trustee for them, and they ask the Court to administer it in the absence of the pledgor or trustor,—and their bill, in a *creditors' suit*, invites other supposed creditors to come in, prove their debts and get their share of the proceeds of the property, which, by decree of the Court, is to be sold for their benefit; and all this in the absence of the debtor, the person most of all to be affected, whose interest is the whole value of the property, while each one of the present and prospective plaintiffs is claiming only a *pro rata* share of it.

We conclude, then, in the language of this Court in *Hagood* v. *Southern*, 117 U. S., at p. 71: "The Court cannot proceed to the determination of a cause and controversy to which the State is an indispensable party, without its presence."

R. H. BATTLE,
(Of Battle & Mordecai),
Solicitor for Defendants.